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**GUN LAWS AND THE NEED FOR SELF-DEFENSE
(PART 2)**

Y 4. J 89/1:104/43/PT. 2

Gun Laws and the Need for Self-Defe...

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME

OF THE

**COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES**

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

APRIL 5, 1995

Serial No. 43



SEP 24 1996

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GUN LAWS AND THE NEED FOR SELF- DEFENSE (Part 2)

WEDNESDAY, APRIL 5, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:34 a.m., in room 2141, Rayburn House Office Building, Hon. Bill McCollum (chairman of the subcommittee) presiding.

Present: Representatives Bill McCollum, Steven Schiff, Stephen E. Buyer, Fred Heineman, Ed Bryant of Tennessee, Steve Chabot, Bob Barr, Charles E. Schumer, Robert C. Scott, Zoe Lofgren, and Sheila Jackson Lee.

Also present: Representatives Roscoe G. Bartlett and John Conyers, Jr.

Staff present: Paul J. McNulty, chief counsel; Glenn R. Schmitt, counsel; Daniel J. Bryant, assistant counsel; Aerin D. Dunkle, research assistant; Audray Clement, secretary; and Tom Diaz, minority counsel.

OPENING STATEMENT OF CHAIRMAN McCOLLUM

Mr. MCCOLLUM. The hearing of the Subcommittee on Crime is called to order.

Today we hold the second hearing in this subcommittee's series of hearings on Federal gun laws. These hearings mark a new chapter in the work of this subcommittee. Too often Congress has relied on gun control as a response to violent crime. We're now shifting attention where it really should be focused: on holding the violent criminal responsible.

The decades of gun control experimentation, combined with reduced accountability for lawbreakers, have produced disastrous results. The violent crime rate has skyrocketed by more than 500 percent since the early 1960's. The number of crimes against persons has soared to 10 million per year. Even though the juvenile population has been declining in recent years, violent juvenile crime has jumped dramatically. Meanwhile, violent criminals ignore gun control laws. Indeed, the highest crime areas around the country, where the drug crime and violence are worst, are the areas of the most gun control.

Today, we're privileged to hear from those on the front line, America's police. In my view, there's no profession that is more

consistently exposed to life-threatening dangers and which fulfills its mission with greater dedication than that of law enforcement. I know I speak for all of my colleagues on this subcommittee when I express my gratitude to law enforcement officers for the risks you take on a daily basis in protecting our communities and for the good-faith efforts to enforce the laws of the land.

It is all too easy for we as policymakers to debate these issues while men and women in law enforcement are out on their streets confronting the predators. These officers and their families must live with the fact that they are constantly at risk, and we are grievously reminded by the Law Enforcement Officers' Memorial just a few blocks away from this room that risks often end in tragedy.

You come from different communities and you often come from different perspectives when it comes to recommending solutions to the problems you face in the line of duty. In the past when it came to guns, we heard generally only from law enforcement officers favoring gun control. While I may disagree with their view on this one issue, it was important that their opinions be considered. I'm pleased this morning that we have the opportunity to consider a viewpoint not often given in a hearing in these corridors, and one that is held, I might add, by many who daily police our streets. This viewpoint does not see gun ownership by law-abiding citizens so much as a threat, but rather as an asset in the struggle to keep our communities safe.

As we hear these differing views, we must remember that there are issues besides gun control that the law enforcement community deeply cares about. At the top of the list is convicting and punishing violent criminals, so that we put an end to the revolving door of justice which too often leaves police arresting and rearresting the same lawbreakers. The one violent criminal a law enforcement officer doesn't have to worry about is the one that's locked up and doing real time. To that end, this subcommittee has already worked on truth-in-sentencing legislation to help slow the revolving door of justice and to ensure the punishment fits the crime. And I might add parenthetically that we are beginning to hear from State leaders that they intend to enact truth-in-sentencing reforms to qualify for prison construction grants.

I'm dedicated to doing all that I can to make our criminal justice system in America work, so that police do not continue to suffer from the frustration of watching their hard work wasted as violent criminals go free. By strengthening the rule of law, we support police officers. My hope is that the testimony we hear today will remind us of the importance of guaranteeing the right to bear arms for law-abiding citizens, another requirement of the rule of law.

The second amendment plays a vital role in making our streets safer. Our job in Congress is to do all we can to make sure that the law enforcement officers before us today are not left with a broken-down criminal justice system that slaps violent predators on the wrists and returns them to the streets. I look forward to hearing from today's witnesses, both from the law enforcement community and some from the academic community, and those that have the experience with the second amendment.

And I now yield to my friend from New York, Mr. Schumer.
Mr. SCHUMER. Well, thank you, Mr. Chairman.

Today's hearing on the second amendment comes the day after the National Rifle Association Conference on the same topic. Is that a coincidence? In fact, one of the professors we'll hear from today was billed as a discussion leader at that NRA Conference. Is that another coincidence? Of course not.

Newt Gingrich and the Republican leadership are working hand in hand with the NRA and the gun lobby to use this committee to stage yet another pep rally for guns. But the intellectual content of this hearing is so far off the edge that we ought to declare this an official meeting of the Flat Earth Society because the pro-gun arguments we'll hear today are as flaky as the arguments of the tiny few who still insist that the earth is flat. Like flat earth fanatics, second amendment fanatics just don't get it. Facts are facts; the earth is not flat, and constitutional law is constitutional law.

The second amendment is not absolute. Neither is any other amendment, and I'm amazed that my colleagues from the other side who believe that the first amendment has gone too far and the fourth amendment has gone too far and the fifth amendment has gone too far, but not the second amendment; that is absolute. There is no room for any interpretation on the second amendment.

But they, of course, are wrong by every constitutional decision that has come up. The second amendment does not guarantee the mythical individual right to bear arms we'll hear argued for today. The gun lobby and its friends in Congress can line up all the professors of history and law from here to NRA headquarters and back. They can all swear what they think the second amendment means and how many angels can dance on a pin head, but the settled law is flatly against them.

The courts have uniformly, consistently, and unanimously ruled against them. There is no room to argue with the leading Supreme Court cases: *United States v. Miller*, *United States v. Cruikshank*, and *Pressler v. Illinois*, and tens of lower Federal court and State court cases following their precedent.

Now some of you will say, oh, that's Chuck Schumer, leading advocate of gun control, talking. So don't take my word for it. I'd like to take a moment here, Mr. Chairman, to play a very brief excerpt from a television interview of a distinguished American on this subject. It's over there on the TV screen.

Mr. MCCOLLUM. Without objection, the tape will be run.

[Video viewed.]

Mr. SCHUMER. Well, for anyone who may not have known, that was former Chief Justice Warren Burger, not exactly a raving liberal, not exactly a gun-banner; as I recall, a conservative Republican appointment to the Supreme Court, the Chief Justice. And in case you couldn't understand the audio part of this video, the Chief Justice said that the NRA and its leaders have "trained themselves and their people to lie, and I can't use any word less than 'lie.'" That's what Chief Justice Warren Burger said. That's not me. That's a distinguished American jurist calling these arguments lies.

He has also said, "There is no constitutional question here. The NRA has convinced a lot of people that the right to bear arms is an absolute right; it is not, any more than the right to have an automobile is an absolute right." So there it is. If anyone tried to sell the baloney we'll hear today, they'd be arrested for consumer

fraud. The NRA's second amendment is an empty cereal box in the marketplace of ideas.

I note also, Mr. Chairman, that the fans of an absolute reading of the second amendment do not extend their absolute reading to the other parts of the Bill of Rights. They're among the first to carve the edges off the right to free speech, guaranteed in the first amendment; to shave the fourth amendment's protection against unreasonable search and seizure, or restrict the sixth amendment's guarantees of due process. For the NRA Flat Earth Society, the Constitution consists of the second amendment, and the second amendment only.

Now one might say, so what? The NRA and its friends in academia and in Congress are entitled to their opinions, certainly that. What harm can come from peddling these phony opinions? The answer is that plenty of harm comes from it.

The first and most serious harm is the poisoning of our political dialog. The NRA and its friends, some of whom serve here in this body, have planted a poisonous weed of political paranoia in the minds of hundreds of thousands of Americans. This barrage of cynical, fundraising NRA propaganda about the second amendment has convinced many people that there's a vast plot to seize their guns and take away their rights. The sickening fruit of this poisonous lie are obvious in our society. Hate groups are arming themselves to answer a purely imaginary plot with real gun violence, and every day Members of this body receive in the mail the most vicious, hate-filled mail imaginable inspired by this biggest of NRA lies. This is dangerous sickness. The NRA is sowing the seeds that will bear the bitterest of fruit.

The second harm is that decent Americans are bamboozled into opposing even modest laws designed to keep guns away from violent criminals, children, and the mentally dangerous. I certainly agree with Mr. McCollum that we must be tougher on violent criminals. I've stood for that in my period in the Congress. But that and gun control are not opposites. Half of the speeches here are given about the violent criminals and how we must do more. We must. That has nothing to do with the opposition to gun control. You can do both. We should do both. They are not opposites, and that is another smokescreen.

Americans, average Americans, are stampeded even into opposing simple gun safety laws that would protect gun owners from the kind of accidents that every year cost the lives and limbs of hunters and recreational shooters. Now let's just, if we could have the other chart, let's just look at what the American people—the first one is the quote from Warren Burger. Let's just look at what the American people do for recreation to make this point.

According to a Roper poll published last week in the New York Times, 40 percent of Americans relax by driving for pleasure; another 26 percent go fishing; 8 percent, only 8 percent, go hunting; and 8 percent engage in target-shooting, which are fine recreational activities. I have many friends and relatives who do just those.

But what's wrong with this picture? Well, the 40 percent who drive put up gladly with a little inconvenience in exchange for our common safety. Their cars are titled and registered; they get driv-

er's licenses. And 26 percent who fish endure the minor inconvenience of getting fishing licenses. But the NRA and the gun lobby go nuts when society seeks to impose even the slightest inconvenience by way of licensing or registration on the minority who own and use guns. This is madness. A tiny minority of people fascinated with guns and something they call the gun ethic is bullying a much bigger majority on the vital issues of health and safety.

Well, Mr. Chairman, I will listen to the flat earth arguments we'll hear today with as much interest as I can. But I say to the NRA and those who push the gun lobby's absolute view of the second amendment: get over it. The earth is not flat and the second amendment is not absolute. You're wrong.

Mr. MCCOLLUM. Thank you, Mr. Schumer.

I'd just like to make the point that the witness panel that's coming up in a few minutes, after the police who are here, from academia are not in any way affiliated with the National Rifle Association, and they have independent views. In fact, they have been very careful to tell us, and tell the chairman, that they do not want to be affiliated with the NRA, and they probably wouldn't have appeared here today if they felt that they will be.

At this time, does anyone else wish to make an opening statement? Anyone desiring to do so? Mr. Heineman.

Mr. HEINEMAN. Thank you, Mr. Chairman.

I hadn't planned on an opening statement. I didn't write it out. I was still abiding by your statement at the beginning of last meeting as to hold them down, but I certainly hope none of the witnesses today are disheartened by what my friend from New York, Mr. Schumer, had to sign about phony opinions. He needs to realize that we have three panels today. One perhaps could be characterized as the gun panel, and one could be characterized as the gun control panel, so to speak. I'm not sure which one he referred to, but he did refer to "poisoning political dialog." I think that gives us a bad start for a hearing where, hopefully, we're trying to "do the right thing."

Yes, the NRA did have a convention. I don't know how that fits in, the day after their convention, to what we're doing here today. Now certainly we have a schedule for our hearings, and the schedule happened to have been put out earlier, and we do have—we scheduled two meetings before our break, and our break starts Friday and this is Wednesday. And I like to think that we're not characterized as guided missiles for the NRA.

I do know that during my two elections I received no assistance from the NRA. There was money put into my first election, but it was put in there for my opponent. In the second election there was no money in my campaign as it relates to receiving any benefits from the NRA. In fact, I was characterized as a "pick him with a liberal."

So I have no ax to grind with or without the NRA or gun control. I just stated at the last meeting, I think, that for 20 years we've been chasing that gun control rabbit and still haven't caught it. I think if we had gotten our act together back 20 years ago and decided that it was people that we have to control, we perhaps could have been controlling people today, and we're not. We haven't been, and, hopefully, as I said at the last meeting, that we will initiate

something here out of this panel, out of this committee, to get a handle on people control.

But I don't know where that cereal box fits in. That's not the first time I heard about a cereal box. That may be an inside joke, but what I heard in the opening statement from my friend from New York, if you're going to characterize it in cereal box terms, was nothing but a lot of puffed wheat and perhaps puffed rice. [Laughter.]

Mr. SCHUMER, I'm sure, is sincere in his opinions, and I think the first amendment gives you the right for your opinion, just as it gives the NRA a right to theirs, and those people that are going to testify today have a right to theirs.

And, certainly, I'm listening with about as objective an ear, or both ears, as I can. And I'm going to make my judgments based on that, but I sure wouldn't want to poison this panel or the next panel we have after the break with predetermined opinions. So I just wanted to bring that out. Like I said, I didn't anticipate making an opening statement, but I sure hope we haven't poisoned this hearing today, and we can get something from it.

Thank you, Mr. Chairman.

Mr. SCHUMER. Will the gentleman yield just for a minute?

Mr. HEINEMAN. Yes, I'll yield.

Mr. SCHUMER. Yes, my remarks are not directed at this panel. They are not directed at any of the specific witnesses here, and I want to assure you of that and them of that.

Mr. HEINEMAN. Thank you, Mr. Schumer.

Mr. MCCOLLUM. Someone else? Mr. Bryant, would you like to make opening comments?

Mr. BRYANT. Thank you, Mr. Chairman.

Like Mr. Heineman, I did not come prepared to make a statement. I was prepared the other day when we had a shortage of time and had a great 11-page statement I couldn't read. [Laughter.]

But coming in late, after having to go to another meeting today, I was able to hear the ending remarks of our colleague from New York, a man that I respect a great deal. We philosophically disagree on many things, but he certainly is an articulate advocate for issues, even though we may disagree on some of those.

He's right that there are very few absolutes in this country. The second amendment is an amendment to our Constitution, part of the original Bill of Rights. It is a part of our Constitution, a very important part of our Constitution. And being a student of history, I learned that that amendment was placed in our Constitution not to protect necessarily the rights of our frontiersmen to carry guns to hunt with, and so forth, because that was pretty much the way of life in many areas back in those days, but was placed in our Constitution more out of a fear of a Government that might become oppressive. And I'm certainly not a right-wing radical, but I think that that is a valid purpose for the second amendment to be intact, that it is the ultimate protection and guard against an oppressive Government.

One only has to look back to the forties, and maybe the late thirties, when Hitler was making the rise in Germany. As they moved into power, they disarmed that country, and there is nothing more

vulnerable, even in today's society, in today's world, 200 years later from the forming of our Constitution, than a disarmed country.

And I think it's those aspects that bother a lot of the gun owners. Unlike a driver's license or a fishing license, if it ever got to that point in this country—and I hope we're not near that, but if it ever did—the people that would come out and hope to disarm our citizenry to do that would not be taking your car away or they wouldn't be coming after your fishing pole. It's something very different; they'd be looking for the guns to disarm the country. And I think, ultimately, that's the core of these strong philosophical beliefs that so many people have that believe very strongly in the second amendment rights, and I think those are legitimate, honest, correct beliefs.

There are differences, there are philosophical differences here, and maybe that's what the issue's about. I gave a short statement the other day that my folks back—I guess the majority of the people I represent in Tennessee feel that we need more criminal control and not gun control, and I think that's ultimately it. To me, it boils down to an issue that it's not the gun; it's the person who uses the gun, and we have to become more efficient and more effective and more aggressive, something I think this administration has not been, in enforcing gun laws against the people who use those guns to commit violent crimes. And, to me, that's where the focus ought to be, rather than taking away the rights of law-abiding citizens or limiting unreasonably the rights of law-abiding citizens to own guns.

And I think this panel today, from reviewing their proposed testimony—I know one of them already, and I know them to be sincere advocates, people who have been on the front lines, on the streets, risking their lives, knowing people who have been killed, who have been hurt in enforcing this law, and I think they have an awful lot of good information that I'm sure they will share with us today. And I thank the panel for coming today.

Mr. MCCOLLUM. Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman. I'll be very brief.

Our goal is to allow our citizens not only to feel safer, but to actually be safer. And I believe that much of our gun control legislation, it may sometimes make some people feel safer when in reality that type of legislation does not really bring about a safer society. I think that the real answer to reducing crime is to crack down on criminals, much as Mr. Bryant of Tennessee just said. We need to lock them up, keep them off our streets.

What we have now, I'm sorry to say, is oftentimes a revolving door justice system. Criminals commit violent offenses. They get long sentences, but then they only serve on average a third of those sentences, and they're back out on our streets, and they continue to prey on the public. So I believe that the true solution to actually allowing us and our families to live in a safer society is to finally get serious about being tough on the criminals, keeping the violent criminals locked up. Let's not just pass more and more gun legislation which really doesn't do anything.

Thank you, Mr. Chairman.

Mr. MCCOLLUM. You're welcome.

Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman.

Mr. Chairman, it's an honor to be a part of this hearing today, both as a member of the subcommittee and as a chairman of the farms legislation task force. I must say, though, that the cut sound bites of the gentleman from New York really focused the debate where it ought not to be, and that is on cute sound bites. The debate ought to be right where it will be with this panel of witnesses today, and that is with law enforcement officials who have vastly more experience in the real world than the gentleman from New York, who know what works in our communities, who know what the second amendment is because they are aware of it; they work it; they work the Constitution; they support the Constitution. They have taken an oath to support that Constitution and to put their lives on the line, if necessary, in support of that Constitution, all of that Constitution.

And I suspect if there were an emergency in this hearing room this instant and the life of the gentleman from New York were in danger, every one of these police officers here today would, without hesitation, step forward and put their lives on the line to protect him. And for him to denigrate them and to call them pawns of the NRA is shameful. It is absolutely shameless, and I resent it.

These are men and women that we have here today, as the panel that we had here last week, Mr. Chairman, who have a deep belief in protecting our citizens, who have a deep belief and a deep understanding of our Constitution, and they are here today because they believe very strongly in it. They have a story to tell. They have examples to tell. They have real-life experiences to tell, and they have vast experience in interpreting the Constitution and understanding the Constitution. And I don't think that any one of them thinks, or would take the position, as the gentleman from New York does, that simply because others disagree with their interpretation or disagree with the way things are in the real world, or disagree with their interpretation of the way things ought to be, that they cast aspersions on those other people and call them pawns of Handgun Control, Inc., or any other organization.

And I, Mr. Chairman, would hope that we would rise above this, rise above the sound bites, rise above labeling everybody who disagrees with the gentleman from New York a pawn of the NRA, and look at our Constitution, look at all of our Constitution, look at the 2nd amendment, look at the 9th amendment, look at the 10th amendment, and see what it says, and see how it works in the real world. And I think that once we get down to the real debate, the real substance debate, and not the cute sound bites that the gentleman from New York is so flip with, then we will, in fact, Mr. Chairman, I think, have a very real dialog, look at real laws, look at how they need to be changed to protect our citizens in the real world, and I look forward to that process and I'm happy to be a part of it.

And I yield back the balance of my time.

Mr. SCHUMER. Would the gentleman yield? I ask unanimous consent for 1 minute since my name was invoked several times.

Mr. MCCOLLUM. So granted, without objection.

Mr. SCHUMER. Thank you.

I'd make two points. No. 1, I did not direct any specific comment at any of the witnesses, and I have tremendous respect for the job they do. I have been a friend of law enforcement all along, and I resent the gentleman using the witnesses as strawmen against my argument. I did not direct a single comment—and I'll give the gentleman a copy of my statement—at the witnesses.

Second, in terms of cute sound bites, I'd like the gentleman, or anyone else on this panel, to answer the Chief Justice's cute sound bite. That's the issue here.

Mr. McCOLLUM. Well, now that we've had our opening statements, I want to recognize the fact that Mr. Bartlett, Roscoe Bartlett of Maryland, is here with us today. He's not a member of the subcommittee, but we want to welcome you as a participant. Because of the general rules of the subcommittee, we don't give you the privilege of making an opening statement, but you're certainly welcome to participate in the questioning.

At this time, I'd like to introduce our first panel. We have three panels today, and our first panel is a police panel. As I call your name and introduce you, I'd like for you to come up, if you would, and take seats. You'll be seated in the order in which I call you from my left, or your right, over here on the far end of the table moving over to the other side.

Our first witness today is police Lt. Dennis Tueller. Lieutenant Tueller is a 21-year veteran of the Salt Lake City Police Department and an instructor in firearms, officer survival training, and defensive tactics. He has helped train firearms instructors, police officers, security agents, SWAT teams, and military personnel. Lieutenant Tueller is also a court-recognized firearms expert and a self-defense consultant.

Lieutenant Tueller, if you'd go ahead and be seated right there in that chair, and then we'll proceed, as I say, with each one of you can come up and go ahead and sit while I'm introducing you.

Our next witness is Chief Dwaine Wilson of the Kennesaw Police Department in Georgia. Chief Wilson has served in law enforcement for 25 years, beginning his career as a patrolman in 1971 and rising through the ranks to become detective and eventually chief of the department. He serves on the board of executives at the Georgia Association of Chiefs of Police, as the fourth vice president, and on the board of advisers for the North Carolina—or, excuse me, the North Central Georgia Police Academy.

Our third witness is Master Police Officer William Craig Roberts from Tulsa, OK. A 25-year veteran in law enforcement, Officer Roberts is currently a helicopter pilot and has held positions with the department's fugitive squad, SWAT team, bomb squad, and police community relations division.

Welcome, Master Police Officer Roberts.

Our next witness is Office Bryant Jennings from Memphis, TN. Officer Jennings is currently president of the Memphis Police Association, representing 1,400 law enforcement officers. As a 15-year veteran with the Memphis Police Department, he has held positions in the uniform patrol division, on the hostage negotiation team, and the crisis intervention team. As a member of the crisis intervention team, Officer Jennings was awarded the lifesavings medal from the city of Memphis.

Our next witness is Officer Steve Rodriguez from Albuquerque, NM. Officer Rodriguez is a 14-year veteran with the Albuquerque Police Department. He has served on the specialized units division, the SWAT team, and two pilot programs which have effectively targeted career criminals and increased the department's tracking of criminals in Albuquerque.

And our sixth and final witness on this panel is Sgt. William Hinz from Minneapolis, MN. Sergeant Hinz is currently a homicide investigator and daytime supervisor for the Minneapolis Police Department. A 24-year veteran in law enforcement, Sergeant Hinz has held positions in the department's crime lab, identification division, the street crime division, and the emergency response team.

Gentlemen, we're honored to have you with us today. Each of you has been in the front lines of the battle against crime and together represent more than a century's worth of law enforcement evidence. I want to welcome each of you again, as I have before.

I've got to do one thing. I promised Mr. Schiff, who's not able to be with us today, that I would recognize Officer Rodriguez and tell him that he really appreciates your coming.

I also know, I believe, that a couple of you are from districts of other members of the panel, and they want to acknowledge that fact. Mr. Bryant, I know you have somebody here from your neighborhood.

Mr. BRYANT of Tennessee. That's correct. I'm pleased to—I mentioned I knew one of the panelist in my opening statement, but Bryant Jennings is a friend of ours. And, of course, as former U.S. attorney, I worked very closely with him and his comrades in arms in the Memphis Police Department, a very outstanding group of people down there.

Mr. MCCOLLUM. And, Mr. Barr, I believe you have a constituent or somebody from your area today?

Mr. BARR. Thank you, Mr. Chairman.

I'm very happy to welcome Chief Dwaine Wilson here today from Kennesaw of Cobb County, GA, a law enforcement official of the highest stature that I've known personally and professionally during my time as U.S. attorney for the Northern District of Georgia. I know that his department is among the finest in the Nation, and I'm very happy to welcome him here today to provide some insights into this important topic, based on his many years of community service as a law enforcement official.

Welcome, Chief.

Mr. MCCOLLUM. Well, we're ready—thank you very much, Mr. Barr.

We're ready to proceed now. We'll go in the order in which you were introduced. We have your full statements in the record, and while you certainly may present whatever you wish of them, the degree to which you can summarize them and give us the basic thrust of what you want to say will allow us more time for questioning.

Mr. Tueller, Lieutenant Tueller.

**STATEMENT OF LT. DENNIS TUELLER, SALT LAKE CITY
POLICE DEPARTMENT, SALT LAKE CITY, UT**

Lieutenant TUELLER. Well, thank you very much. Good morning to members of the committee. I'd like to thank you all very much for this invitation and opportunity to testify today.

As I've been introduced, I should, I suppose, introduce myself a little bit. My name is Dennis Tueller, and I am a lieutenant with the Salt Lake City Police Department, Salt Lake City, UT. I have been with that department for a little over 21 years, and my current assignment is as a field commander. And in that assignment, I oversee and supervise all police department functions and activities during my shift.

As the chairman mentioned, I'm also a firearms instructor. And I've been very fortunate to be able to work with and teach with some of the finest firearms instructors in the world. I've helped train police officers, as mentioned, other firearms instructors, and the emphasis of that training is to help people, responsible civilians alike, to learn to be safe, responsible, and effective in their use of firearms for self-defense.

And at the risk of sounding politically incorrect, I would also share with the committee that I like guns and I enjoy shooting, and that's also true of my family and most of my friends and acquaintances. In my travels throughout the United States, I can tell you that I have met thousands of good people who feel exactly the same way, and I know that there are tens of millions of other American who also share these same sentiments, interests, and values.

I'm here today to share with you some of my personal experience and expertise on what I feel is an important issue. Today you're hearing testimony that dispels the myth that law enforcement is strongly in support of gun control as a method of controlling crime. And I was reminded during some of the opening remarks that I sometimes need a little help defining that term. As a firearms instructor, when people talk about gun control, to me that means hitting your target repeatedly and precisely and correctly. I think what comes to my mind when this phrase is used is unilateral personal disarmament, which is often being talked about. So I'll try to understand what I'm saying as I read it here.

But the idea that law enforcement is in control—or supports gun control as a method of controlling crime is false. This committee, the public, are going to be learning the truth from a representative sampling of officers from across America. These law enforcement professionals assembled before you today run the entire gamut from the officer on the street to the detective who investigates the homicide, to frontline supervisors, all the way up to and including a chief of a police department. The one common theme known to all of these officers is that guns are not the problem when it comes to America's runaway crime epidemic.

I have never seen a crime committed by a gun. We know, I know that gun ownership by honest citizens is totally unrelated to the violent crime problem we're experiencing. Street officers and crime victims across the country share the belief that the No. 1 way to reduce crime in our Nation is to punish criminal behavior. Make criminals serve the time to which they are sentenced. The clock needs to be turned back to the days when prison was, in fact, a de-

terrent to crime, when prisoners served real time and real punishment for the crimes, not just short vacations away from their friends on the street. This is the type of real crime control that cops and the public, I believe, want to see at the national level.

So far, the President, in conjunction with some Members of Congress, has continued to grandstand, and what the people get is rhetoric and gimmicks, certainly not justice. The recently-passed so-called crime bill which outlaws certain types of guns and an entire class of magazines, the same kinds of magazines I use in many of my firearms that I shoot, that my family shoots, that millions of other law-abiding Americans use for sport hunting, recreation, and self-defense, this is just—this kind of legislation is just one of the most recent and egregious examples of this mixed up media idea that guns cause crime.

Antigun strategists learned an important lesson some time ago, and that lesson was that law enforcement, if properly handled, is a potent legislative ally. Those who hate the idea of citizens having the freedom to choose to own a gun have worked diligently to create and encourage the fraudulent idea that cops agree with their agenda to strip away the second amendment.

They began to infiltrate traditional law enforcement groups. These groups recruited high-profile, publicity-seeking police officials in high-profile, politically antigun areas. Ultimately, these antigun police administrators went on to create a number of national police groups with a distinct antisecond amendment stance. Gun-hating groups and politicians like HGI and President Clinton used police-based groups like the National Grand Lodge of the Fraternal Order of Police, or FOP; the International Associations of Chiefs of Police, or IACP; the National Sheriffs Association, and the Police Foundation in their push for the Brady Act. Then they used these same groups to support President Clinton's so-called crime bill.

Well, contrary to what was portrayed in the national media, working law enforcement did not support the crime bill, and especially did not support the gun ban. These antigun law enforcement types are not driven by ideology or the belief that more gun control will make this country safer. Rather, I believe they're driven by money and politics. The Clinton-Reno Justice Department bought and paid for its law enforcement allies with perfectly legitimate Federal money. They dipped deep into the Federal pork barrel and used our tax dollars. According to the June 1, 1994, edition of "The Criminal Justice Newsletter," \$4.4 million was given to these same antigun police organizations. The taxpayer dollars came to these groups through the Bureau of Justice Assistance and went to the Police Executive Research Forum, IACP, National Sheriffs Association, and the Police Foundation. The money was ostensibly to provide community policing training and technical assistance. Well, this type of taxpayer funding of police groups that profess their unwavering support of more gun control has been ongoing for years. Investors Business Daily and Law and Order magazine both claim that IACP received almost \$650,000 such dollars in 1993.

Well, you may wonder, what does all this taxpayer money going to these groups have to do with the fraud that cops support gun control? Just this: after the initial congressional rejection of the

gun and magazine bans in the crime bill, the IACP put out a request to police commanders which I quote: "to encourage as many off-duty members as possible to attend this assembly in uniform and also to compel as many on-duty uniformed members to attend—as manpower will allow."

Well, this assembly was, in fact, little more than a photo opportunity for then Treasury Secretary Lloyd Bentsen—you see the picture portrayed there—when he was on the Hill in a desperate, last-ditch effort to help pass the so-called, and inappropriately named, "assault weapons" ban.

At this point it would be appropriate for me to emphasize that I am here on my own time, as are my colleagues. No one has ordered us to attend this conference, and we appreciate the invitation and the opportunity to express ourselves.

The fact is that in many cases, in this case, rank- and-file officers were pulled off street duty, at taxpayers' expense, and often against their will, and under threat of disciplinary action if they refused to participate. In other words, they were coerced into this charade to generate phony support for this ill-conceived legislation.

Then the leaders of these national police groups joined in supporting the President's efforts to ban—or, excuse me, to pass these gun bans, and they claimed to represent that law enforcement nationwide wanted and needed this gun and magazine ban. Well, these groups misled the Congress. They misled the media, and they misled the American public into believing that law enforcement's over 600,000 members backed these gun control measures. They never bothered to survey the cops they claimed to represent. Those who have surveyed our police have found that they do not support more gun control. And, as evidence of that, I would submit the following:

From the Police Marksman Association survey from late last year, 1994, comes the following: 95 percent of officers do not like the ban on large-capacity magazine; 92 percent do not support the so-called assault weapons ban; 93 percent disagree with the Brady bill.

From the July and August 1991 edition of Law Enforcement Technology magazine, after surveying its 25,000 subscribers, determined the following: 78.7 percent were against a ban on so-called assault weapons; 84.6 percent feel that gun control does not lessen crime; 78.2 percent believe that criminals will always be able to obtain guns irrespective of gun control legislation.

From the 1993 Southern States Police Benevolent Association survey of its over 10,000 members, we learn: 96.4 percent support the private ownership of firearms specifically for self-protection; 86.5 percent felt that waiting periods would only affect law-abiding citizens. And when given a list of 20 possible causes of crime, only 1.1 percent of those officers listed guns as the most pressing cause of crime.

Guns don't cause crime. Guns don't cause robbery any more than availability of spray paint cans causes graffiti or availability of automobiles causes drunken driving fatalities. Guns are the tool of the criminal, one of many.

There's more. The April 1993 informal survey sampling of the readers of Police magazine, one of the largest that serves our pro-

fession: 85 percent did not support the so-called assault weapon ban; 90 percent feel gun ownership by civilians has not negatively affected their jobs, and 85 percent said they believe citizens' gun ownership increases public safety; 77 percent did not support the Brady bill.

Well, these surveys back up what I know from my more than two decades of law enforcement experience. Street cops overwhelmingly do not support gun control. We're not interested in more laws which the criminals will flaunt and ignore. Criminals, by definition, don't care what the law says.

This is why so many officers have decided to join the Law Enforcement Alliance of America, whose mission, in part, is to dispel this myth that gun control is a viable answer to crime and to show that rank-and-file cops do not believe in gun control.

LEAA organized a National Law Enforcement Coalition to oppose the crime bill, and nearly 100 law enforcement organizations which represented a membership of more than 100,000 law enforcement professionals spoke out against the crime bill and its ban on semi-automatic firearms and large-capacity magazines. LEAA's coalition included several State and local chapters of the FOP, as well as the Nation's largest correctional officers' association, the California Correctional and Peace Officers Association; several other State-level organizations to include the Massachusetts Police Union and Legislative League and the Oklahoma State Sheriffs Association, to name just a few.

Well, this anticrime bill coalition was put together in the few weeks before the final vote, and through this coalition LEAA assembled and hand delivered a 34-page report detailing law enforcement's strong opposition, and this report was delivered to key Members of the House of Representatives and to all Senators. Dozens of pro-second amendment officers, again, on their own time, converged in Washington, DC, to meet Congress face to face and to deliver our message of opposition to this ineffective, feel-good legislation.

We need to learn sooner or later that law enforcement can and should be utilized as an extremely effective political force and that we can have a significant impact on both the public's and politician's view of an issue. The politically sneaky and dishonest, behind-the-scenes actions of the antigun leaders of these national organizations that purport to speak for the Nation's law enforcement professionals, this must be exposed and it must be stopped.

Please remember our name: the Law Enforcement Alliance of America. We are an alliance of over 40,000 police officers and citizens united in a firm commitment to put an end to the excuse-making, the criminal coddling, and rampant disregard of basic civility, morality, and justice.

Real police, real law enforcement, real men and women sworn to uphold the law and the Constitution of the United States, whether you call them officer, trooper, deputy, corrections officer, they are dedicated to preserving the peace of the community, and they're in perfect sync with the public on the issue of crime and crime control. We, like our neighbors, know of the viciousness and irresponsibility of criminals. And we, like every hard-working family in the United States, regardless of their color, religious, or ethnic back-

ground or affiliation, know that every man, woman, and child must be held accountable for his or her own actions. The good should be rewarded and the bad must be punished.

We also know that under the liberal agenda that's been in place for so many years the exact opposite is true. The good are frequently penalized while the bad reap the rewards and usually go unpunished.

The single biggest threat to the liberals and their excuse-making approach to crime is what we represent. The Law Enforcement Alliance of America is real cops, real citizens, real crime victims, and we will not be silenced. We speak out against early release. We speak up against dumping criminal predators, violent, depraved people back into society. We speak up against revolving-door justice. We speak out for our right to protect our lives, our families, and our possessions against criminal violence, and we will work for a return to swift, tough, fair, and blind justice. We speak up for freedom and the way of life that made this country great.

Gun control laws historically are failures when it comes to trying to keep guns from the hands of criminals. The guns are banned. Honest citizens' rights are trampled on or destroyed, and the criminals continue to avoid punishment.

Those who push this so-called assault weapon and magazine ban have shown that they are against all guns. Senator Dianne Feinstein summed it up best with her remarks during an interview on CBS, "60 Minutes." She said she wanted to come into everyone's home and make them turn in all their guns. She wasn't talking about criminals; she was talking about you and me. And the only thing that stopped her was that she didn't have enough votes to sell it, nor did she have enough stormtroopers to do it, and I, for one, would not participate in such an illegal, unconstitutional, and un-American approach to solving crime in this country.

The recent gun ban is aimed at honest, law-abiding citizens who want to own a firearm, firearms that happen to have a modern, military look, guns that look mean, guns that look bad. This isn't about criminals. It isn't even about cops. This is a blatant effort to take away citizens' rights to own a particular type of gun, and if the gun-haters in Congress had their way, they would like to outlaw all guns. They would like to eliminate private ownership. Unilateral personal disarmament I believe is their goal.

Well, I also believe it's time to put the blame for crime where it belongs, on the criminal. We have quite enough Government intervention in our lives. One of my favorite quotes that I was reminded of while listening to the opening remarks comes from George Washington. He said, "Government is not eloquence. It is not reason. It is a force, like fire, a dangerous servant and a fearful master."

I urge you to please repeal this gun and magazine ban from last year's crime bill. We in law enforcement don't need it, nor do we want it.

Thank you.

[The prepared statement of Lieutenant Tueller follows:]

PREPARED STATEMENT OF LT. DENNIS TUELLER, SALT LAKE CITY POLICE
DEPARTMENT, SALT LAKE CITY, UT

Good morning members of the committee and thank you for the opportunity to testify today. My name is Dennis Tueller and I'm a Lieutenant from the Salt Lake City, Utah, Police Department, and I have over twenty years of law enforcement experience. I am also a firearms instructor and have trained police officers, security agents, SWAT teams, firearms instructors, and responsible civilians from throughout the free world.

I like guns and I enjoy shooting. In my travels throughout the United States, I have met thousands of good people who feel the same. And I know that there are tens of millions of other Americans who share the same sentiments and interests.

Today you are hearing testimony that dispels the myth that law enforcement is strongly in support of gun control as a method of controlling crime. This committee, and the public are learning the truth from a representative sampling of officers from across America. These law enforcement professionals assembled before you today run the entire gamut from the officer on the street, to the detective that investigates the homicide, to the front line supervisors all the way up to the Chief of a department. The one common theme known to all these officers is that guns are not the problem when it comes to America's run away crime epidemic. We have never seen a gun commit a crime.

We know... I know... that gun ownership by honest citizens is totally unrelated to the violent crime problem we are experiencing.

Street officers and crime victims across the country share the belief that the number one way to reduce crime in our nation is to punish criminal behavior. Make criminals serve the time to which they are sentenced. The clock needs to be turned back to the days when prison was a deterrent to crime -- when prisoners served real time for their crimes, not just short vacations away from the street.

This is the type of real crime control that cops and the public want to see at the

national level. So far the President, in conjunction with some members of Congress, has continued to grandstand and what the people get are rhetoric and gimmicks - not justice. The recently passed so-called "crime bill", which outlaws certain types of guns and an entire class of magazines - magazines used in millions of firearms across the country for protection and sport - is just the most recent and egregious example of this mixed up idea.

Anti-gun strategists learned an important lesson along time ago. That lesson was that Law Enforcement, if properly handled, is a potent legislative ally. Those who hate the idea of citizens having the freedom to choose to own a gun have worked diligently to create and encourage the fraud that cops agree with the agenda to strip away the Second Amendment.

They began to infiltrate traditional law enforcement groups. These groups recruited high profile, publicity seeking police officials in high profile, politically anti-gun areas. Ultimately these anti-gun police administrators went on to create a number of national police groups with a distinct anti-Second Amendment stance.

Gun hating groups and politicians, like HCI and President Clinton, used police based groups like the National Grand Lodge of the Fraternal Order of Police (FOP), the International Association of Chiefs of Police (IACP), the National Sheriffs Association (NSA), and the Police Foundation in their push for the Brady Act. Then they used these same groups to support President Clinton's Crime Bill.

Contrary to what was portrayed in the national media, working Law Enforcement did not support the Crime Bill and especially did not support its gun ban.

Anti-gun law enforcement is not driven by ideology or the belief that more gun control will make this country safer. Rather, it's driven by money and politics.

The Clinton/Reno Justice Department bought and paid for its law enforcement allies with perfectly legitimate federal money. They dipped deep into the federal pork barrel - and used OUR tax dollars.

According to the June 1, 1994, edition of the Criminal Justice Newsletter, \$4.4 million dollars was given to these same anti-gun police organizations. The taxpayer dollars came to these groups through the Bureau of Justice Assistance and went to the Police Executive Research Forum, IACP, National Sheriff's Association, and the Police Foundation. The money was ostensibly to provide community policing training and technical assistance.

This type of taxpayer funding of police groups that profess their unwavering support of more gun-control has been ongoing for years. Investor's Business Daily and Law and Order magazine both claim that IACP received almost 650,000 dollars in 1993.

You may wonder, What does all this taxpayer money going to these groups have to do with the fraud that cops support gun-control? Just this... After the initial Congressional rejection of the Gun and Magazine ban, the IACP put out a request to police commanders (and I quote) "to encourage as many off duty members as possible to attend this assembly in uniform and also compel as many on duty uniformed members to attend... as manpower will allow". This "assembly" was in fact a photo opportunity for then Treasury Secretary Lloyd Bentsen, when he was on the hill in a desperate, last ditch effort help pass the so-called "Assault Weapons" ban. I wish to emphasize that I am here on my own time.

When President Clinton issued his call for assistance in passing his ridiculous, wasteful Crime Bill guess who he called on for help and guess who came to do his bidding? When he stood in front of those uniformed officers to show that law enforcement supported his bill it was a fraud. The fact is that in many cases rank-and-file cops were pulled off street duty, on the taxpayers nickel - and often against their will and under the threat of disciplinary action if they refused to participate - to support this legislation.

Then the leaders of these national police groups joined in supporting his efforts to pass these gun bans and they claimed to represent that law enforcement nationwide wanted and needed this gun and magazine ban. These groups misled Congress, the media, and the public into believing that law enforcement's 600,000 members backed the gun control measures. They never surveyed the cops they

claimed to represent. Those who have surveyed our police have found that they do not support more gun control.

From the Police Marksman Association survey from September/October and November/December 1994, comes:

- 95% of officers do not like the ban on large capacity magazines
- 92% do not support the so-called "Assault Weapon" Ban
- 93% disagree with the "Brady Bill"

From the July/August 1991 edition of Law Enforcement Technology magazine after surveying its 25,000 subscribers determined that:

- 78.7% were against a ban on "Assault Weapons"
- 84.6% feel that gun control does not lessen crime
- 78.2% believe that criminals will always be able to obtain guns irrespective of gun control legislation

From the 1993 Southern States Police Benevolent Association survey of over 10,000 members comes:

- 96.4% support firearms ownership for self-protection
- 86.5% felt that waiting periods would only affect law-abiding citizens
- 1.1% choose guns as the most pressing cause of crime (given 20 choices)

The April 1993, informal survey of a sampling of the readers of Police magazine showed:

- 85% did not support an "Assault Weapons" ban
- 90% feel gun ownership by civilians has not negatively affected their jobs
- 85% believe citizen's gun ownership increases public safety
- 77% did not support the "Brady Bill"

These surveys back up what I know from more than twenty years of police experience. Street cops overwhelmingly do NOT support gun control. We are not interested in more laws which criminals will flaunt and ignore.

This is why so many officers have now decided to join the Law Enforcement Alliance of America, whose mission is, in part, to dispel the myth that gun control

is a viable answer to crime and to show that rank-and-file cops do not believe in gun-control.

LEAA organized a "National Law Enforcement Coalition" to oppose the Crime Bill. Nearly 100 law enforcement organizations representing a membership of more than 100,000 law enforcement professionals spoke out against the Crime Bill and its ban on semi-autos and large capacity magazines.

LEAA's coalition included several state and local chapters of the FOP, the nations largest correctional officers association - the California Correctional and Peace Officer's Association (CCPOA) and several other state level organizations: to include the Massachusetts Police Union and Legislative League and the Oklahoma State Sheriff's Association just to name a few.

This anti-Crime Bill coalition was put together in the few weeks before the final vote.

Through this coalition, LEAA assembled and hand delivered a 34 page report detailing law enforcement's strong opposition of it to key members of the House of Representatives and all Senators.

Dozens of pro-Second Amendment officers, on their own time converged in Washington DC to meet Congress face-to-face and deliver our message of opposition to this "feel good", ineffective legislation.

We must learn, sooner or later, that Law Enforcement can be utilized as an extremely effective political force and that they can have a significant impact on both the public's and politician's view of an issue.

The political and dishonest "behind the scenes" actions of the anti-gun leaders of the national organizations that purport to speak America's law enforcement professionals must be exposed and stopped.

Remember our name...The Law Enforcement Alliance of America. We are an alliance of over 40,000 police and citizens united in a firm commitment to put an

end to the excuse-making, the criminal coddling, and the rampant disregard of basic civility, morality, and justice.

Real police... Real law enforcement... Real men and women sworn to uphold the law and the Constitution of the United States - whether you call them officer, trooper, deputy, or corrections officer - who are dedicated to preserving the peace of the community are in perfect sync with the public on the issue of crime and crime control.

We, like our neighbors living in our communities, know the viciousness and irresponsibility of criminals. We, like every hard working family in the nation regardless of their skin pigment or religious or ethnic affiliation, know that every man, woman, and child must be held accountable for his or her own actions. The good must be rewarded and the bad must be punished.

We also know that under the liberal agenda the exact opposite is true. The good are penalized and the bad reap the rewards and usually go unpunished.

The single biggest threat to the liberals and their "excuse-making" approach to crime is what we represent. The Law Enforcement Alliance of America is real cops, real citizens, real crime victims -- we will not be silenced.

We speak out against early release. We speak up against dumping the depraved and violent back out into society. We speak up against revolving door justice. We speak up for our right to protect our lives, our families, and our possessions against criminal violence with swift, tough, fair, and blind justice.

We speak up for freedom and the way of life that made this country great.

Gun control laws are historically abject failures... guns are banned, honest citizens' rights are destroyed and the criminals continue to avoid punishment.

Those who pushed the "Assault Weapon" and magazine ban have shown that they are against all guns. Senator Dianne Feinstein summed it up best with her remarks during her interview on CBS's 60 Minutes. She said she wanted to come

into everyone's home and make them turn in all their guns. She wasn't talking about criminals. She was talking about you and me, and the only thing that stopped her was that she didn't have enough votes or enough "storm troopers" to do it.

The recent gun ban is aimed at honest, law-abiding citizens who want to own a firearm, firearms that happen to have a modern, military look. This isn't about criminals, it isn't even about cops. This is a blatant effort to take away citizens' rights to own a particular type of gun... and if the gun haters in Congress had their way they would like to outlaw all guns in private ownership in this nation. It's time to put the blame for crime where it belongs...on the criminal.

Please repeal the gun and magazine ban from last year's Crime Bill: we don't need it or want it.

Thank you.

Mr. McCOLLUM. Thank you, Lieutenant Tueller.

Before I go on to Chief Wilson—and I'm about to do that—I just want to comment that I do respect your views. I listen to them very carefully. I know you represent a very wide number of law enforcement members of the community, but I do have to comment, because of the nature of your comments about other organizations, that this subcommittee does continue to enjoy the strong support and positive relationships with the Fraternal Order of Police, the International Association of Chiefs of Police, the Sheriffs Associations, and many other law enforcement groups, who may not in total share your views. So I have to state that disclaimer. It's somewhat like putting a disclaimer in at the end of the movie run, but we do have a good relationship with those other organizations.

And I appreciate your testimony.

Chief Wilson, please proceed.

STATEMENT OF CHIEF DWAIN J. WILSON, KENNESAW POLICE DEPARTMENT, KENNESAW, GA

Chief WILSON. Thank you, Mr. Chairman.

Chairman McCollum and members of the subcommittee, I would like to thank you for the opportunity to appear before you today to provide the testimony on my view of the relationship between law enforcement and armed citizens.

As many of you know, Kennesaw, GA, gained international attention 13 years ago this past March when the city passed a law allowing the head of each household to keep and bear firearms for the defense of their families, themselves, and their homes.

I've been in law enforcement for the past 25 years. I've supervised patrol units, been in charge of criminal investigations, created the detective division for the city of Kennesaw, and have been chief of police of my department for the last 10 years.

As all chiefs know—and Congressman Heineman, being a former chief of police can attest to—we have a unique responsibility to the community, safeguarding the rights of all without putting one before the other. I've personally investigated a number of homicides, hundreds of burglaries, and hundreds of rapes. I've dealt with pretty hardened criminals, and I've been personally responsible for the safety and training of my fellow officers. I believe my experience and what I've observed during my 18 years with the Kennesaw Police Department makes me uniquely qualified to speak on the issue of armed citizens, law enforcement, and public safety.

Kennesaw itself provides probably the best example of how law enforcement and armed honest citizens coexist, since virtually every home has at least one gun in it. I am here to tell you that it would be hard-pressed to find a more peaceful community anywhere in this or any other nation on earth. Since our armed citizen law passed in 1982, crime, particularly armed crime, in Kennesaw has dropped dramatically. In fact, Kennesaw has twice been nominated as the safest city in my county, which is Cobb.

In spite of predictions by the press and antigun politicians, we haven't had any incidents where citizens have accidentally show family members or domestic disturbances being resolved with gunfire. Kennesaw is an armed community, but a very peaceful community.

Criminals who dare come to Kennesaw also pick their victims very carefully. They pick on the elderly and those who cannot protect themselves. In fact, I've received telephone calls from felons in penitentiaries around the country who have learned about the law through press accounts. Those felons have stated to myself on many occasions that they would think twice before coming into Kennesaw and committing a crime. That, Mr. Chairman, is what I call good press, and I would hope every city in the country could get calls like that.

In my view, the relationship between armed citizens—armed honest citizens—and law enforcement is great. Neither my officers, nor officers from any other department in the country, can ever be anywhere where a crime may occur all at one time. A firearm allows a citizen to hold an intruder until the police can respond. More important, the presence of a firearm can save his or her life. Firearms are a way for average citizens to defend themselves until the police can arrive on the scene.

Do we as law enforcement feel secure knowing that a significant number of citizens in our community are armed? The answer is an emphatic yes. In fact, we are currently instituting community policing and neighborhood watch programs in Kennesaw. The police department will be working directly with armed citizens, and we are very comfortable knowing that they are armed.

Mr. Chairman, members of the committee, I was introduced to firearms by my father. He took me on my first hunting trip when I was 8 years old. He taught to be safe with firearms and he taught me to respect firearms. I also came to appreciate law enforcement and a desire to become a policeman at a unique early age from members of my family. You might say I was raised respecting the second amendment and law enforcement, because both are deeply held family values.

I am a grown man. I've spent a lifetime in law enforcement and around firearms. I have not changed my respect for either. If anything, I've grown even more appreciative of the lessons I've learned and the opportunity this country afforded me to enjoy both.

I hope that what you do here today will enable future generations of Americans to experience the same values imparted to me, and I cannot stress enough the fact that you should trust the public to do the right thing with firearms. We did in Kennesaw, and we are safe, peaceful, and ideal place to live.

Thank you, Mr. Chairman.

[The prepared statement of Chief Wilson follows:]

PREPARED STATEMENT OF CHIEF DWAIN J. WILSON, KENNESAW POLICE
DEPARTMENT, KENNESAW, GA

CHAIRMAN MCCOLLUM, MEMBERS OF THE SUBCOMMITTEE, I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO PROVIDE TESTIMONY ON MY VIEW OF THE RELATIONSHIP BETWEEN LAW ENFORCEMENT AND ARMED CITIZENS.

AS MANY OF YOU MAY KNOW, KENNESAW, GEORGIA GAINED INTERNATIONAL ATTENTION 13 YEARS AGO THIS PAST MARCH WHEN THE CITY PASSED A LAW ALLOWING THE HEAD OF EACH HOUSEHOLD TO KEEP AND BEAR FIREARMS FOR THE DEFENSE OF THEMSELVES, THEIR FAMILIES, AND THEIR HOMES.

I'VE BEEN IN LAW ENFORCEMENT FOR THE PAST 25 YEARS. I'VE SUPERVISED PATROL UNITS, BEEN IN CHARGE OF CRIMINAL INVESTIGATIONS, CREATED KENNESAW'S DETECTIVE DIVISION, AND BEEN CHIEF OF THE DEPARTMENT FOR THE PAST 10 YEARS.

AS ALL CHIEFS KNOW, AND CONGRESSMAN HEINEMAN, BEING A FORMER CHIEF OF POLICE, CAN ATTEST TO, WE HAVE A UNIQUE RESPONSIBILITY TO THE COMMUNITY, SAFEGUARDING THE RIGHTS OF ALL, WITHOUT PUTTING ONE ABOVE THE OTHER.

I'VE PERSONALLY INVESTIGATED A NUMBER OF HOMICIDES, HUNDREDS OF BURGLARIES, AND HUNDREDS OF RAPES.

I'VE DEALT WITH SOME PRETTY HARDENED CRIMINALS AND I'VE BEEN PERSONALLY RESPONSIBLE FOR THE SAFETY AND TRAINING OF MY FELLOW OFFICERS.

I BELIEVE MY EXPERIENCE AND WHAT I'VE OBSERVED DURING MY 18 YEARS WITH THE KENNESAW POLICE DEPARTMENT MAKES ME UNIQUELY QUALIFIED TO SPEAK TO THE ISSUE OF ARMED CITIZENS, LAW ENFORCEMENT, AND PUBLIC SAFETY.

KENNESAW, ITSELF, PROVIDES PROBABLY THE BEST EXAMPLE OF HOW LAW ENFORCEMENT AND ARMED HONEST CITIZENS CO-EXIST. SINCE VIRTUALLY EVERY HOME HAS AT LEAST ONE GUN IN IT.

I AM HERE TO TELL YOU, YOU WOULD BE HARD PRESSED TO FIND A MORE PEACEFUL COMMUNITY ANYWHERE IN THIS OR ANY NATION ON EARTH. SINCE OUR "ARMED CITIZEN" LAW PASSED IN 1982, CRIME, PARTICULARLY ARMED CRIME, IN KENNESAW HAS DROPPED OFF DRAMATICALLY. IN FACT, KENNESAW HAS TWICE BEEN NOMINATED AS THE SAFEST CITY IN COBB COUNTY.

IN SPITE OF PREDICTIONS BY THE PRESS AND ANTI-GUN POLITICIANS, WE HAVEN'T HAD ANY INCIDENTS WHERE CITIZENS HAVE ACCIDENTALLY SHOT FAMILY MEMBERS, OR DOMESTIC DISTURBANCES BEING RESOLVED WITH GUNFIRE.

KENNESAW IS AN ARMED COMMUNITY BUT A VERY PEACEFUL COMMUNITY.

CRIMINALS WHO DARE COME TO KENNESAW ALSO PICK THEIR VICTIMS VERY

CAREFULLY. THEY PICK ON THE ELDERLY AND THOSE WHO CANNOT PROTECT THEMSELVES.

IN FACT, I'VE RECEIVED TELEPHONE CALLS FROM FELONS IN PENITENTIARIES AROUND THE COUNTRY WHO LEARNED OF OUR LAW FROM PRESS ACCOUNTS. THOSE FELONS HAVE STATED THAT THEY WOULD THINK TWICE BEFORE COMING TO OUR COMMUNITY TO COMMIT A CRIME.

THAT, MR. CHAIRMAN, IS WHAT I CALL GOOD PRESS. AND I WOULD HOPE EVERY CITY IN THE COUNTRY COULD GET CALLS LIKE THAT.

IN MY VIEW, THE RELATIONSHIP BETWEEN ARMED HONEST CITIZENS AND LAW ENFORCEMENT IS GREAT.

NEITHER MY OFFICERS, NOR OFFICERS FROM ANY OTHER DEPARTMENT IN THE COUNTRY CAN BE EVERY WHERE A CRIME OCCURS. A FIREARM ALLOWS A CITIZEN TO HOLD AN INTRUDER UNTIL THE POLICE CAN RESPOND. MORE IMPORTANT, THE PRESENCE OF A FIREARM CAN SAVE HIS OR HER LIFE. FIREARMS ARE A WAY FOR AVERAGE CITIZENS TO DEFEND THEMSELVES UNTIL WE ARRIVE ON THE SCENE.

DO WE AS LAW ENFORCEMENT FEEL SECURE KNOWING A SIGNIFICANT NUMBER OF CITIZENS IN OUR COMMUNITY ARE ARMED? THE ANSWER IS AN EMPHATIC YES INDEED.

IN FACT WE ARE CURRENTLY INSTITUTING COMMUNITY POLICING AND NEIGHBORHOOD WATCH PROGRAMS IN KENNESAW. THE POLICE DEPARTMENT

WILL BE WORKING DIRECTLY WITH ARMED CITIZENS -- AND WE ARE VERY COMFORTABLE KNOWING THEY ARE ARMED.

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I WAS INTRODUCED TO FIREARMS BY MY FATHER. HE TOOK ME HUNTING FOR THE FIRST TIME WHEN I WAS EIGHT YEARS OLD. HE TAUGHT ME TO BE SAFE WITH FIREARMS AND HE TAUGHT ME RESPECT FOR FIREARMS.

I ALSO CAME TO AN APPRECIATION OF LAW ENFORCEMENT AND A DESIRE TO BECOME A POLICEMAN AT AN EQUALLY EARLY AGE FROM MEMBERS OF MY FAMILY.

YOU MIGHT SAY I WAS RAISED RESPECTING THE SECOND AMENDMENT AND LAW ENFORCEMENT BECAUSE BOTH WERE DEEPLY HELD FAMILY VALUES.

I AM A GROWN MAN. I'VE SPENT A LIFETIME IN LAW ENFORCEMENT AND AROUND FIREARMS. I HAVE NOT CHANGED MY RESPECT FOR EITHER. IF ANYTHING I'VE GROWN EVEN MORE APPRECIATIVE OF THE LESSONS I LEARNED AND THE OPPORTUNITY THIS COUNTRY AFFORDED ME TO ENJOY BOTH.

I HOPE WHAT YOU DO HERE TODAY WILL ENABLE FUTURE GENERATIONS OF AMERICANS TO EXPERIENCE THE SAME VALUES IMPARTED TO ME. AND I CANNOT STRESS ENOUGH THE FACT THAT YOU SHOULD TRUST THE PUBLIC TO DO THE RIGHT THING WITH FIREARMS. WE DID IN KENNESAW AND WE ARE A SAFE, PEACEFUL, AND IDEAL PLACE TO LIVE.

Mr. McCOLLUM. Thank you, Chief Wilson.

Officer Roberts, please proceed. You need to use your microphone and turn it on right there.

**STATEMENT OF MASTER OFFICER WILLIAM CRAIG ROBERTS,
TULSA POLICE DEPARTMENT, TULSA, OK**

Officer ROBERTS. Like my colleagues, gentlemen, gentleladies, I'm here on my own time. I've taken vacation because I think this is an important issue. I did not come alone. I do not represent just myself. I do not represent the city of Tulsa, nor the opinions of the administration, but I do represent over 155 officers who signed this petition in my police department, that I would like to enter into the record——

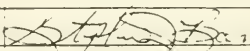

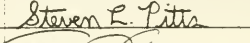
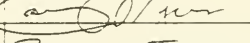
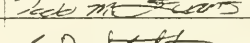
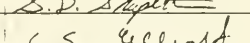
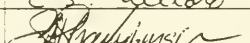
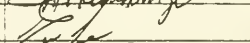
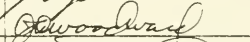

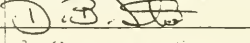
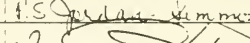
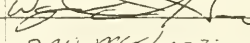
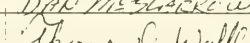
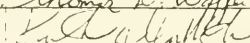
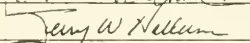
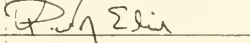
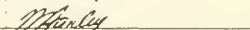
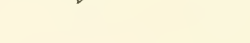
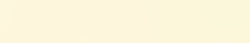
Mr. McCOLLUM. Without objection, it is so entered.

Officer ROBERTS [continuing]. Who want the same thing done.

[The information follows:]

PETITION

This petition is to endorse the repeal of the Assault Weapons and Large Capacity Ammunition Feeding Devices portion of the Omnibus Crime Law of 1994. Whereas the below signed active police officers believe that the so-called assault weapons and large capacity magazine or "feeding devices" portion of the Omnibus Crime Law is both ineffectual in controlling crime, and detrimental to our ability to control crime, we hereby affix our signatures to this petition. The below signed police officers are members of the Tulsa, Oklahoma, Police Department.

| | Printed Name | Signature | Telephone |
|----|----------------------|---|----------------|
| 1 | STEPHEN J. BASS |  | 582-9107 |
| 2 | M. A. CURRAGE |  | 541-2405 |
| 3 | S. L. PETTS |  | 274-7445 |
| 4 | C. L. MYERS |  | 254-9044 |
| 5 | T. M. EVANS |  | 666-0010 |
| 6 | G. D. STAPLETON |  | 622-6041 |
| 7 | C. S. ELLIOTT |  | 665-6208 |
| 8 | SA. SHAMBURGER |  | 254-836 |
| 9 | G. W. JOHNS |  | 582-2120 |
| 10 | J. D. WOODWARD |  | 486-2878 |
| 11 | S. K. ALLEN |  | 582-6399 |
| 12 | D. B. STICE |  | 444-48-0957 |
| 13 | P. S. JORDAN-SIMMONS |  | 442-725953 |
| 14 | W. H. HAY |  | 947-741095 |
| 15 | DAN M. MESHAKOV |  | 441-445591 |
| 16 | THOMAS D. WAFFLE SR. |  | (918) 862-3691 |
| 17 | KEITH M. GIER |  | 918-3661654 |
| 18 | JERRY W. HALLUM |  | 918-3418948 |
| 19 | PAUL N. ESKRIDGE |  | 918-446-2618 |
| 20 | M. P. HANLEY |  | 918-6339650 |

PETITION

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| | Printed Name | Signature | Telephone |
|----|--------------------|---------------------------|----------------|
| 1 | Kyle Warlick | <i>Kyle Warlick</i> | 1418-457-3170 |
| 2 | GLEN EMERY | <i>Glen Emery</i> | 835-8113 |
| 3 | RICHARD COLEMAN | <i>Richard Coleman</i> | (918) 6650709 |
| 4 | SHARON GWIN | <i>Sharon Gwin</i> | (418) 627-1420 |
| 5 | CARL SNELL | <i>Carl Snell</i> | (918) 588-0012 |
| 6 | EDWARD W. BUCKSPAN | <i>Edward W. Buckspan</i> | (418) 455 7157 |
| 7 | DENNIS MACDONNELL | <i>Dennis MacDonnell</i> | 918 455 5857 |
| 8 | D. F. HARRISON | <i>D. F. Harrison</i> | 918 836 6932 |
| 9 | D. R. HICKS | <i>D. R. Hicks</i> | 918-455-7621 |
| 10 | DAVID C. WINTER | <i>David C. Winter</i> | 118 43 2100 |
| 11 | J. L. WARLOCK | <i>J. L. Warlock</i> | 918-836-6115 |
| 12 | R. K. McSLARROW | <i>R. K. McSlarrow</i> | 918 425 6710 |
| 13 | JOEL A. COLE SR. | <i>Joel A. Cole Sr.</i> | 918-437 9392 |
| 14 | M. C. LOCCO | <i>M. C. Locco</i> | 918 669-6600 |
| 15 | D. M. BEATH | <i>D. M. Beath</i> | 918 749 6770 |
| 16 | J. KARR | <i>J. Karr</i> | 918 669 6000 |
| 17 | R. C. KURTZ | <i>R. C. Kurtz</i> | 918-251-2771 |
| 18 | S. H. WANZER | <i>S. H. Wanzer</i> | 918 638 2271 |
| 19 | R. D. MORRIS | <i>R. D. Morris</i> | 918 669 6000 |
| 20 | R. J. DAUGHERTY | <i>R. J. Daugherty</i> | 918 437-5044 |

PETITION

This petition is to endorse the repeal of the Assault Weapons and Large Capacity Ammunition Feeding Devices portion of the Omnibus Crime Law of 1994. Whereas the below signed active police officers believe that the so-called assault weapons and large capacity magazine or "feeding devices" portion of the Omnibus Crime Law is both ineffectual in controlling crime, and detrimental to our ability to control crime, we hereby affix our signatures to this petition. The below signed police officers are members of the Tulsa, Oklahoma, Police Department.

| | Printed Name | Signature | Telephone |
|----|------------------------|------------------------|----------------|
| 1 | CHARLES MICHAEL McCOOL | Charles Michael McCool | (918) 493-2537 |
| 2 | William C. Carr | W.C. Carr | (918) 441-7841 |
| 3 | GEORGE WATKINS | E. J. Watkins | (918) 631-5302 |
| 4 | JAMES H. McCLELLAND | J. H. McClelland | 918-427-7435 |
| 5 | F. E. Coomes | F. E. Coomes | 711-5211-9001 |
| 6 | J. R. Rimer | J. R. Rimer | 918 584 8942 |
| 7 | S. J. McLaughlin | S. J. McLaughlin | 918 272 3611 |
| 8 | A. J. Woods | A. J. Woods | 918 272 5741 |
| 9 | R. L. Rawn | R. L. Rawn | 918 457 2239 |
| 10 | W. M. Smith | W. M. Smith | 918 254 2957 |
| 11 | A. D. WEBSTER | A. D. Webster | 918-250-8273 |
| 12 | J. EDELLER | J. Edeller | 918 250 6709 |
| 13 | M. SPAGUS | M. Spagus | 918 488 0803 |
| 14 | ME LOVELL-COMPTON | ME Lovell-Compton | 918 831 9248 |
| 15 | R. C. JONES | R. C. Jones | 918 437 8538 |
| 16 | C. A. Compton | C. A. Compton | (918) 591-4100 |
| 17 | J. GROSS | J. Gross | 918 591-4100 |
| 18 | G. L. FISH | G. L. Fish | 918-501-1100 |
| 19 | BRUCE LLOYD | Bruce Lloyd | 918-535-2563 |
| 20 | Charles V. Miller | Charles Miller | 918 396-4439 |

PETITION

This petition is to endorse the repeal of the Assault Weapons and Large Capacity Ammunition Feeding Devices portion of the Omnibus Crime Law of 1994. Whereas the below signed active police officers believe that the so-called assault weapons and large capacity magazine or "feeding devices" portion of the Omnibus Crime Law is both ineffectual in controlling crime, and detrimental to our ability to control crime, we hereby affix our signatures to this petition. The below signed police officers are members of the Tulsa Oklahoma, Police Department.

| | Printed Name | Signature | Telephone |
|----|------------------------------|------------------------------|-------------|
| 1 | WALT MILLER | Walt Miller | 591-4100 |
| 2 | G J VALLEY | G J Valley | 591-4100 |
| 3 | J.D. GALLEMORE | J.D. Gallimore | 591-4100 |
| 4 | M.E. BAYLES | M.E. Bayles | 591-4100 |
| 5 | K.O. COOPER | K.O. Cooper | 591-4100 |
| 6 | J.E. HENDERSON | J.E. Henderson | 591-4100 |
| 7 | J.E. POYNER | J.E. Poyner | 591-4100 |
| 8 | J.B. COMSTOCK | J.B. Comstock | 591-4100 |
| 9 | C.J. COLLINS | C.J. Collins | 591-4100 |
| 10 | HOWARD K. HADLEY | Howard K. Hadley | 591-4100 |
| 11 | BRENT C. LEONARD | Brent C. Leonard | 446-56-6782 |
| 12 | JOHN STEVENSON | John Stevenson | 591-4100 |
| 13 | KETHI FALLIS | Kethi Fallis | 591-4100 |
| 14 | JEFF GATWOOD | Jeff Gatwood | 591-4100 |
| 15 | L.L. VISSER | L.L. Visser | 591-4100 |
| 16 | B.L. VISSER | B.L. Visser | 591-4100 |
| 17 | E.B. BARNHAM | E.B. Barnham | 591-4100 |
| 18 | M J ECKERT | M J Eckert | 591-4100 |
| 19 | J.E. ROGERS | J.E. Rogers | 591-4100 |
| 20 | SHARON TRICE TINA WATKINS | Sharon Trice Tina Watkins | 591-4100 |

PETITION

This petition is to endorse the repeal of the Assault weapons and Large Capacity Ammunition Feeding Devices portion of the Omnibus Crime Law of 1994. Whereas the below signed active police officers believe that the so-called assault weapons and large capacity magazine or "feeding devices" portion of the Omnibus Crime Law is both ineffectual in controlling crime, and detrimental to our ability to control crime, we hereby affix our signatures to this petition. The below signed police officers are members of the Tulsa, Oklahoma, Police Department.

| | Printed Name | Signature | Telephone |
|----|-----------------|-----------------|--------------|
| 1 | B.C. Yarbrough | B.C. Yarbrough | 591-4100 |
| 2 | M.D. SECREST | M.D. Secrest | 591-4100 |
| 3 | Alan TERRY | Alan Terry | 591-4100 |
| 4 | JACK PIKE | Jack Pike | 591-4100 |
| 5 | GARY E. UPTON | Gary E. Upton | 591-4100 |
| 6 | R. Z. KEYS | R. Z. Keys | 591-4100 |
| 7 | J.J. HARRIS | J.J. Harris | 665-7155 |
| 8 | J.S. SENSE | J.S. Sense | 591-4100 |
| 9 | D.O. WHITE | D.O. White | 591-4100 |
| 10 | J. FELTON | J. Felton | 591-4100 |
| 11 | TENA WADLEY | Tena Wadley | 591-4100 |
| 12 | A.M. GREGORY | A.M. Gregory | 591-4132 |
| 13 | RICK AEBERLE | R.A. Aeberle | 434-5340 |
| 14 | D.P. VALLEY | D.P. Valley | 591-4531 |
| 15 | TERRY BISHOP | Terry Bishop | 591-4100 |
| 16 | GREG T. KRAGEL | Greg T. Krangel | 712-247420 |
| 17 | Daniel L. Allen | Daniel L. Allen | 918-587-8119 |
| 18 | WALTER C. LEHON | Walter C. Lehon | 835-0690 |
| 19 | MICHAEL NANCE | Michael Nance | 634-9635 |
| 20 | ROBERT S. JONES | Robert S. Jones | 491-2170 |

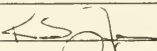
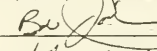
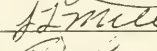

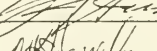
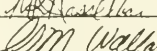
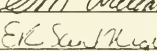
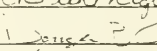
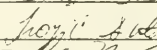
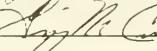
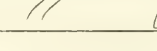
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| | Printed Name | Signature | Telephone |
|----|---------------------------|-----------------|--------------|
| 1 | ROBERT S. ROHLF | RS Rohlff | 918-270-7249 |
| 2 | N.C. COBY | N.C. Coby | 596-1100 |
| 3 | J. Crawford (J. Crawford) | J. Crawford | 596-1100 |
| 4 | WAZULI D. DODD | Wazuli D. Dodd | 596-1100 |
| 5 | E. MATON | E. Maton | 596-1100 |
| 6 | V. SMEDLEY | V. Smedley | 596-1100 |
| 7 | S.D. ROGERS | S.D. Rogers | 596-1100 |
| 8 | D.S. FILAK | D.S. Filak | 596-1100 |
| 9 | H.D. COBB | H.D. Cobb | 596-1100 |
| 10 | R.A. HASSLEBACH | R.A. Hasslebach | 596-1100 |
| 11 | S.F. OREM | S.F. Orem | 596-1100 |
| 12 | D.M. KORTEN | D.M. Korten | 596-1100 |
| 13 | MARK GROVES | Mark Groves | 596-1133 |
| 14 | CARL SMITH | Carl Smith | 918-596-1100 |
| 15 | TON FORD | Tom Ford | 596-1133 |
| 16 | STEVE HAZ | Steve Haz | 596-1100 |
| 17 | DAVID POOL | David Pool | 492-2636 |
| 18 | LOUIS ARCE | Louis Arce | 113-32-5784 |
| 19 | G.M. McMEEN | G.M. McMeen | 918-234-1547 |
| 20 | P. J. EVANS | P.J. Evans | 918-596-1100 |

PETITION

This petition is to endorse the repeal of the Assault Weapons and Large Capacity Ammunition Feeding Devices portion of the Omnibus Crime Law of 1994. Whereas the below signed active police officers believe that the so-called assault weapons and large capacity magazine or "feeding devices" portion of the Omnibus Crime Law is both ineffectual in controlling crime, and detrimental to our ability to control crime, we hereby affix our signatures to this petition. The below signed police officers are members of the Tulsa, Oklahoma, Police Department.

| | Printed Name | Signature | Telephone |
|----|----------------|---|----------------|
| 1 | K L Jones |  | 918 245-1254 |
| 2 | DOB JACKSON |  | 918 745 7467 |
| 3 | J L MILLER |  | 918 506 1100 |
| 4 | R D ROLAN |  | |
| 5 | K HEWITT |  | 918-252-5971 |
| 6 | MARK HASSILBAR |  | 918 341-9006 |
| 7 | G. M. WALLACE |  | 918-291-3019 |
| 8 | E K SHANNON |  | (918) 440-2719 |
| 9 | D B CLARK |  | (918) 447-4477 |
| 10 | T C STILL |  | |
| 11 | G M CONFERT |  | (918) 252-6445 |
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| | Printed Name | Signature | Telephone |
|----|-------------------------|---------------------------|----------------|
| 1 | SGT. MICHAEL J. GARNER | <i>Michael J. Garner</i> | 918-596-9367 |
| 2 | Off. Ben Winston | <i>Ben Winston</i> | 918-663-8274 |
| 3 | Off. William M. JOHNSON | <i>William M. Johnson</i> | 918-297-3612 |
| 4 | S/O T. J. STANLEY | <i>T. J. Stanley</i> | (918) 96 9151 |
| 5 | S/O DIXIE DAVIS | <i>Dixie Davis</i> | 918 596 9151 |
| 6 | Sgt. J. R. CULKA | <i>J. R. Culka</i> | 918 463 7156 |
| 7 | SGT W L DAIN | <i>W L Dain</i> | (918) 958 9225 |
| 8 | MPO J. C. MURRAY | <i>J. C. Murray</i> | (918) 596-9151 |
| 9 | JR. MYERS | <i>J. R. Myers</i> | (918) 591-4500 |
| 10 | L. D. MATER | <i>L. D. Mater</i> | (918) 488-9115 |
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| | Printed Name | Signature | Telephone |
|----|---------------------|--------------------------|----------------|
| 1 | LUTHER BREASHEARS | <i>Luther Breashears</i> | (918) 250-4945 |
| 2 | ALAN CHAMBERS | <i>Alan Chambers</i> | |
| 3 | LARRY C. LACEBY | <i>Larry C. Lacey</i> | (918) 277-5560 |
| 4 | SHERRY L. STALLINGS | <i>Sherry Stallings</i> | 918 250-1883 |
| 5 | JAMES R. NOLEN | <i>James R. Nolen</i> | 918 250-1183 |
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| | Printed Name | Signature | Telephone |
|----|--------------------|--------------------|----------------|
| 1 | WILLIAM C. ROBERTS | William C. Roberts | (918) 591-4083 |
| 2 | DANIEL L. MOUNTAIN | Dan Mountain | (918) 591-4080 |
| 3 | MICHAEL L. AULT | Michael L. Ault | (918) 596-9355 |
| 4 | DONALD R. HESTER | Donald R. Hester | (918) 596-9355 |
| 5 | RICHARD L. WHITE | Richard L. White | (918) 596-9355 |
| 6 | ROBERT CARTNER | Robert Cartner | (918) 596-9322 |
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| | Printed Name | Signature | Telephone |
|----|---------------|---------------|--------------|
| 1 | W.H. BELLAMY | W.H. Bellamy | 918-457-2771 |
| 2 | G.H. GREGORY | G.H. Gregory | 918-667-6000 |
| 3 | J.L. PARSONS | J.L. Parsons | |
| 4 | J.M. GRIFFITH | J.M. Griffith | 918-637-4681 |
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Officer ROBERTS. This petition—gentlemen, I was only told last Monday or asked last Monday if I could come. I had only 24 hours, through shift changes, working on three of our eight divisions, to gather these signatures. They were—I had officers come into my office and volunteer to circulate these. That's 155 plus 1.

Gentlemen, I'm Master Patrol Officer Craig Roberts. I've been on the Tulsa Police Department for 25, almost 26 years. I retire next year and I have no axe to grind. I only came here for one purpose, and that was to correct some lies and to tell the truth. I've got a lot of notes here, and I think I'm going to divert from them because I've heard some things that need some attention today.

I sat home last year and I watched things in Congress go through, and so did my colleagues, and we saw lie after lie. We saw facts and quotes and statistics, and they just weren't true. They didn't ring. They were political rhetoric. They were strings that are dangled out there to catch the public. And I think, by and large, some of it worked. So I came here for one reason, and that's just to tell the truth and tell what I know.

I'm not originally an Oklahoma native. I grew up in or, actually, I was born in a community in south central Los Angeles, but I have been wearing the badge of the Tulsa Police Department for the last 25 years, a quarter of a century. And, by the way, I'd like to mention that we have about 125 years here of police experience that takes us almost back to the Civil War, if we lined up.

Our city has—it's not a large department, but it's not a small department. It's average mainstream America. It's 700 officers, give or take a few, of all races, nationalities, sexes. We cover over 200 square miles. We have eight divisions and three divisional patrol areas.

In my time, I've served under five chiefs, five mayors, and six Presidents. When I came on the job, the Vietnam War was in full swing; the Chicago Seven had just gone to trial, and names such as the Black Panthers and Huey Newton, H. Rap Brown, and Angela Davis, Abbey Hoffman, Jerry Rubin, the SDS, and the Weathermen were in the news. So-called peace marches were legion; civil disturbances and riots rocked the Nation. And I'm going to tell you something right now: being a policeman in those days was not the most popular job to have, and it wasn't a fun thing to do, but someone had to do it.

I started out at \$442 a month, and we had to borrow money at the end of the month to buy groceries to make it to the first of the month to get a paycheck. Things have improved.

I worked the streets through the years, and I saw the fall of Saigon, the *Mayaguez* incident, the killing fields of Cambodia, the arrest of Charles Manson and his family, and the assassination of Robert F. Kennedy. I saw Watergate, the Iran hostage fiasco, Iran-Contra, Desert Storm. In my years, I've seen the emergence and demise of hippies, yuppies, and I've stood on the thin blue line of riot formations on city streets, county jails, youth institutions, and our largest penitentiary—the bloodiest riot we've had in the State of Oklahoma in July 1973, at McAllester, OK, and I was on the front line of the SWAT team.

My duty assignments have included serving as a patrol officer, bomb disposal technician, SWAT team member, fugitive warrants

officer, various plain clothes assignments, a police academy instructor for 11 years, and, most recently, a police helicopter pilot. And I'll caveat that with a footnote: the police academy instructor is an additional duty assignment. I didn't ride a desk. I went there at the end of my shift.

During all of my time on the job I have not once faced or even seen a so-called assault weapon, used in confrontation in the hands of criminals, not once. I only know of two instances wherein a firearm was even mentioned of such classification that Congress has given to it, and one of those times concerned simply one being turned in as stolen property brought back from Vietnam as a souvenir, turned in because it was an automatic weapon originally, stolen, and then we found it.

I have written or coauthored 21 books, gentlemen, 3 of which concern firearms. And because of my writing, I've been featured as a speaker in police agencies across the country, different organizations, and law enforcement seminars and conventions. And this past year, I've traveled from Ft. Lauderdale, FL, to Portland, OR; St. Louis, MO, to Dallas, TX, and Houston to Milwaukee, and I've spoken with literally hundreds of police officers. So I'm not just here talking about something I know. I've spoken with police officers, State troopers, and Federal agents of various departments. And I can tell you that the number of so-called assault weapons that I've been able to find used in crimes across this great Nation of ours can be counted up from the people I talked to, the questions I asked, on two hands.

And the point I wish to make here is that the mere existence of these so-called assault weapons and their high-capacity magazines, according to us in the trenches, the field officers, the police officers, the guys out there in the dark alleys at night when everybody's home asleep, are not the threat to society or to us, nor are they the weapons of choice—and I've heard this word until I want to get sick—the weapons of choice for street gangs or, worse, the elusive drug lords.

I did a poll. I wanted to know how many police officers ever run into one of these drug lords. I couldn't find any. Yes, we run into street dealers. We don't run into these drug lords running around with machineguns and bazookas.

In actual fact, these so-called assault weapons pose less of a threat than the more powerful high-powered rifles and shotguns that we classify as "sporting firearms." I would much rather face an AK-47 with my police car between me and it than I would a .30-06 or another high-powered bolt-action rifle, especially if someone knows how to shoot.

Police officers do not fear semiautomatic weapons, no matter how many rounds the magazine holds. What we fear are the criminals that use the weapon, and they can get it, regardless of the laws on the books, that we encounter over and over and over on the streets after they have been processed through the criminal justice system, served a minimum sentence, if any sentence at all, and have been released to prey on citizens again. It's not the gun laws that need to be fixed, gentlemen; it's the judicial system. And I can tell you how you can help us with that right now.

You want to help us? I'll tell you how to help us. We have Federal judges, not State judges, we have Federal judges who right now talk to us about prison overcrowding, jail overcrowding; let them loose; they have to have so much space. These people have more space than I had when I was in the Marine Corps.

We see them on the streets over and over, and what do they do? They go find some kind of a weapon.

Regarding the conflict over the wording of the second amendment, I would like to take this constitutional issue into an area that has not been mentioned anywhere in any of these hearings, gentlemen, and I think we're missing a point here. In January 1969, I took an oath of office, and in this oath I stated that I "solemnly swear that I will defend, enforce, and obey the Constitution and laws of the United States," the State of Oklahoma, and the charter and ordinances of the city of Tulsa; that I will obey the lawful orders of my superior officers and regulations of the Tulsa Police Department; that I will protect the rights, lives, and property of the citizens, and uphold the honor of the police profession with my life, if need be, and I've done that for a quarter of a century.

Now because of our training and education, we know that if we enforce a law upon a citizen that later fails a test of constitutionality—gentlemen, you make the laws; we uphold them, but we're the ones held liable in a court of law, and we can lose our house, our bank account, and our livelihood if we make the wrong decision or interpret something wrong, and that's another word I don't like, is "interpret." I read a law; it's black ink on white paper; it's not gray. It means exactly what it says. We don't have time in two and a half split seconds in the field to interpret a law before we make a decision.

When that occasion occurs, neither Members of Congress that pass the laws, nor the Department of Justice comes to our defense. To the contrary, the Department of Justice becomes the prosecutor and we become the victims. With this threat constantly hanging over our heads, we do not need more laws to confuse us and place us in harm's way in civil actions. We need fewer. We don't need to be the victims investigated by the FBI because we made a stupid decision in the field, according to some judge.

And it has been my experience that enacting laws that restrict the ownership or right to bear firearms does not help the police, nor does it keep citizens safe. And with today's soaring number of calls for police service our police departments receive, we often find days and nights when response time to an emergency can be well over an hour and often longer due to lack of manpower in these days of austere city budgets. On too many occasions, we find ourselves as law enforcement officers as reactive to circumstances, not proactive. I can remember the days we could get a call and be there in 3 to 4 minutes. We don't have that today. I've called the police myself and waited an hour. It is extremely difficult these days to prevent a crime from occurring because we are too busy handling crimes that have already occurred. The paperwork, the court process, all the stuff we go through, gentlemen, takes up so much of our time that we have even less time than ever to patrol the streets and protect the citizens.

And I want to make a point at this time. You and I share something in common. We're both public servants, and we need to remember who the bosses are. They're the people out there that pay our taxes. Sometimes we get up here on the Hill and we forget who brought us to the dance. We get wrapped around the axle on some of these things, and it flies in the face of reason that we got here across the Potomac, and boom, all of a sudden, we're immune to listening to the people at home. Now you're hearing from the people at home. I hope you pay attention.

If anyone thinks that protecting yourself is simply dialing 911, and that's the ultimate form of self-defense, I can only tell you this: we'll get there in time to take some really nice color crime scene photographs, draw a crime scene sketch, maybe lift some prints, and make some nice reports, because it's going to be too late to save you and your family. The attacker is going to be long gone. This means that having a semiautomatic weapon, a shotgun, or anything you can get your hands on, you're going to use it to protect yourself, unless you have a death wish.

We must remember that we are employees of the people above all else, and we don't want to take away their means of self-defense. I want them to help me do my job. Community-based policing means that we all try to stop crime. And if somebody breaks in your house at 2 o'clock in the morning and he walks down the aisle, and Congress has taken away your means of self-defense, and he's 6-foot, 8-inch ex-con with tatoos up and down both arms, foaming at the mouth, and he's got a hatchet in one hand and he's got a machete in the other, I would like, Congressmen, to ask you a question: do you want to knife fight this man?

When the Colt 44 peacemaker came out, it had an inscription on the first one that said: "Be not afraid of any man, no matter what his size, for if he larger than you be, call on me and I will equalize." That same inscription came out on the first M-16s that went to Vietnam.

It has been my experience that Federal law has little impact on local law or law enforcement because we can't enforce your laws, gentlemen. You make your Federal laws; we don't work with Federal law. You're not helping us at all. You're only making our job more difficult. We work with State law, and we work with city ordinance. If we want to file Federal charges, we have to make an effort to take those reports to the Feds and beg them to take the case.

I was on the bomb squad in the 1970's. I worked with 52 devices in 2 years. Two cases were actually investigated by the ATF, two on Federal charges, and only one was actually prosecuted, 52 in 2 years. So where are all the Federal laws that we needed then?

It should be noted that Federal agencies and their agents have their own caseload and provide little support for State or local cases. Therefore, Federal laws, no matter how well-intentioned in Congress, are more political than effective in real life.

Regarding the onslaught of the media hype presented concerning the number of police officers and law enforcement organizations who supported a ban on assault weapons and large-capacity magazines, and what is purported when politicians mention that these gun control efforts have the backing of chief law enforcement offi-

cers, the majority of which of these chief law enforcement officers, gentlemen, have not served in the field in over 20 years; they've lost touch with reality. They don't ask us what's going on. They're too busy going to political functions. The smaller departments, the chiefs, have much better contact with the officers. The large ones, you'll never see them. We got a new chief 2 years ago. I've talked to him, I think, three times.

I do not come here to give the opinion of only myself. As I said, I came here because I want to speak for the officers in our department, at least 155 that had time to find and sign the petition. But I'd like to add one other thing before I close. We don't fear the weapons, no matter what they are. We fear the criminal behind the weapon. If you want to help us, attack the criminal, not the tool.

Mr. Chairman, I spent a week of my life facing real—or a year of my life facing real assault weapons, AK-47's with full automatic selectors, M-16's, RPK's, RPD's, and heavy machineguns. I was in the 1st Marine Regiment to see combat in South Vietnam, the 9th Marines. And, as a member of the 9th Marine Expeditionary Force in 1965 and 1966, I waded steaming paddies, hacked through jungles, climbed mountains, lived in foxholes, ate C-rations, lost 57 pounds, was wounded a few times, participated in three major operations, and faced Vietcong and NVA, and I put a dent in a few of them myself and they put some dents in me. I did that for 11 months, and in the end I was awarded nine decorations, including the Combat Action Ribbon from the Marine Corps, the Vietnam Cross of Gallantry, and the Purple Heart.

And I'm going to say something to you right now, and I'll bet you'd better listen to me: I have been there and I have seen what happens to a population that's been disarmed and can't defend itself. I've seen women and children and men mutilated, tortured, and killed in villages because they had no weapons, not just by the Vietcong, not just by the NVA, but by the Saigon government as well. Our own Government was involved in that with 26,000 in the Phoenix Program, and these people couldn't defend themselves. I was there. No one saw more than I did or can talk to me about it. I saw it. I lived it and I still live it.

And do you know what I learned over there? I learned one thing. I wasn't afraid of the weapons. I was afraid of the guy behind the weapons, and that's who we really needed to go after.

Let us work to repeal this expensive, ineffective, unconstitutional law and use our assets in a much more efficient manner elsewhere. I, and the 155 officers that came with me in spirit and in heart from our department, ask that you please repeal this ridiculous gun ban. It does absolutely no good.

Thank you, gentlemen, for permitting me to speak before this honorable committee.

[The prepared statement of Officer Roberts follows:]

PREPARED STATEMENT OF MASTER OFFICER WILLIAM CRAIG ROBERTS, TULSA POLICE
DEPARTMENT, TULSA, OK

Gentleman, I am Master Police Officer Craig Roberts of the Tulsa, Oklahoma, Police Department. I am not an Oklahoma native; I am originally from Southern California, from a community that borders what recently has reached media infamy known as South Central L.A.¹

However, for the past quarter of a century I have worn the badge of the police department of the City of Tulsa, a city of 220 square miles and almost 400,000 people.² Our department is almost 700 strong in sworn personnel, and we work in eight divisions and three divisional patrol areas.³ In my time I have served under five chiefs,⁴ five mayors⁵ and six presidents. When I came on the job the Vietnam war was in full swing, the Chicago Seven had just gone to trial, and names such as the Black Panthers and Huey Newton, H. Rap Brown and Angela Davis, and the SDS and the Weathermen were in the news. So-called Peace Marches were legion, civil disturbances and riots rocked the nation, and being a police officer was not the popular job to have.

I worked the streets through the years that saw the fall of Saigon, the Mayaguez incident, the killing fields of Cambodia, the arrest of Charles Manson and his "family," the assassination of Robert Kennedy, Watergate, the Iran Hostage fiasco, Iran-Contra, and Desert Storm. In my years I've seen the emergence and demise of hippies, yippies and yuppies, and I've stood on the thin blue line of riot formations on city streets, county jails, and our largest state penitentiary.⁶

My duty assignments have included serving as a patrol officer, bomb disposal technician, SWAT team member, Fugitive Warrants officer, various plain clothes assignments, police academy instructor, and most recently police helicopter pilot.⁸

During all of my time on the job I have not once faced or even seen a so-called assault weapon used in a confrontation in the hands of criminals. Indeed, I know of only two circumstances wherein such a firearm was even mentioned--and one of those times concerned one simply being turned in as recovered stolen property.⁹

I have written or co-authored twenty-one books, three of which concern firearms. Because of my writing, I have been featured as a speaker in law enforcement seminars and conventions across the country. This past year I have traveled from Fort Lauderdale to Portland, Oregon; St. Louis to Dallas; Houston to Milwaukee. I have spoken with literally hundreds of police officers, state troopers and federal agents from accross the nation. I can tell you today that the number of so-called assault weapons personally encountered by these officers in

hostile situations, according to their responses to my questions, could be counted on two hands.

The point I wish to make here is that the mere existence of these so-called assault weapons and their "high-capacity" magazines, according to in-the-trenches field police officers, are not a threat to society or to us. Nor are they the "weapons of choice" for street gangs--or worse, the elusive "drug lords," of which neither I, nor any of my fellow Tulsa officers, have ever encountered. In actual fact, these so-called "assault weapons" pose less of a threat than the more powerful high-powered rifles and shotguns classified as "sporting firearms."

Police officers do not fear semi-automatic weapons, no matter how many rounds the magazine holds. What we fear are the criminals that use any weapon they can get, regardless of the laws on the books, that we encounter over and over on the streets, after they have been processed through the criminal justice system, served a minimum sentence (if any sentence at all), and have been released to prey on citizens again. It's not the gun laws that need to be fixed, it's the judicial system.

Regarding the conflict over the wording of the Second Amendment, I would like to take the constitutional issue into an area that has not been mentioned. In January of 1969 I took an oath of office. This oath, in part, stated that I "...do solemnly swear, that I will defend, enforce, and obey, the Constitution and laws of the United States, the State of Oklahoma and the Charter and Ordinances of the City of Tulsa. That I will obey the lawful orders of my superior officers and regulations of the Tulsa Police Department. That I will protect the Rights, Lives

and Property of all citizens and uphold the honor of the Police Profession, with my life, if need be."¹⁰

Since that date I have had to make sure that every arrest I made, every law I enforced, met the tests of Constitutionality. If it didn't, I would be held personally liable--much as were the officers in the Rodney King affair. Indeed, we are all subject to 42 USC S 1983, and I quote:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."¹¹

The majority of police officers across the nation take a similar oath of office as mine. Because of our oath to the Constitution--the supreme legal document of our land--and the penalties of violating that oath or enforcing laws that might violate the test of Constitutionality, attempting to enforce the so-called ban on "assault weapons" and "high capacity" magazines--due to the word "infringed"--make the effort confusing, hazardous and legally dangerous for law enforcement officers. We have all been trained, either in the military or in law enforcement, that we have a duty to refuse to obey an unlawful or illegal order, law or regulation.¹² In fact, a Supreme Court decision (Marbury vs. Madison) states: "An Act of Congress repugnant to the Constitution is not law. When the Constitution and an act of Congress are in conflict, the Constitution must govern

the case to which both apply. Congress cannot confer on this court any original jurisdiction. The powers of the legislature are defined and limited; and those limits may not be mistaken, or forgotten is the reason the Constitution was written."¹³

Add to this, Section 256 from the Sixteenth American Jurisprudence, Second Edition: "The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void, and ineffective for any purpose; since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it. An unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed. Such a statute leaves the question it purports to settle just as it would be had the statute not been enacted. Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority to anyone, affords no protection, and justifies no acts performed under it." Further, "No one is bound to obey an unconstitutional law and no courts are bound to enforce it."¹⁴

Because of our training and education, we know that if we enforce a law upon a citizen that later fails a test of constitutionality, we are personally liable. And when that occasion occurs, neither the members of Congress that pass the laws, nor the Department of Justice comes to our defense. To the contrary, the DoJ becomes the prosecutor and we become the defendants. With this threat constantly hanging over our heads, we do not need more laws to confuse us and place us in harm's way in civil actions, we need fewer.

It has been my experience that enacting laws that restrict the ownership or right to bear firearms does not help the police, nor does it help keep citizens safe.

With today's soaring number of calls for service our police departments receive, we often find days and nights when response time to an emergency call can be over an hour--and often longer--due to lack of manpower in these days of austere city budgets. On too many occasions we find ourselves, as law enforcement officers, as reactive to circumstances instead of proactive. It is extremely difficult these days to prevent a crime from occurring because we are so busy handling crimes that have already occurred. If anyone thinks that simply dialing 911 is the ultimate form of self defense, I can only say that in these days and times that far too often, by the time the police arrive, it will only be in time to take crime scene photographs and collect forensic evidence. The attacker will be long gone. The means to self defense, whether by handgun or semi-automatic rifle, should not be inhibited by federal legislation.

We must remember that we are employees of the people--not their rulers or keepers. It is your mission as a representative to listen to We the People--the highest level of government in the American political chain-of-command, and reflect their wishes. And it is our mission as law enforcement officers, using good and reasonable laws that pass the test of Constitutionality, to protect those same people.

Title XI--Firearms (Subtitle A--Assault Weapons) is not such a law. In fact, in Tulsa, we cannot use this legislation, even if there were no questions of

constitutionality, because we do not enforce federal law. We deal with state and local law, therefore this legislation has virtually no impact on "helping the cops in the trenches," as the media portrays.

It has been my experience that federal law has little impact on local crime or law enforcement. In Tulsa, no mechanism exists for our officers to utilize federal law to our benefit. We file our charges under Municipal Code and State Law, not federal law. If we find what we think is a federal violation, we must forward a copy of our report to the federal agency who specializes in that law such as FBI or BATF. However, in my experience as a Bomb Squad technician, of the fifty-two bomb incidents I handled in a two year period only two were acted upon by the ATF--and then only after a special request by the chief of police at the time. It should be noted that federal agencies and their agents have their own case load and can provide little support for state or local cases. Therefore, federal laws, no matter how well intentioned in Congress, are more political than effective in real life.

Regarding the onslaught of media hype presented concerning the number of police officers and law enforcement organizations who supported a ban on assault weapons and large capacity magazines, and what is purported when politicians mention that these gun control efforts have the backing of "chief law enforcement officers" (the majority of which have not served on the streets in twenty or more years and have little concept of what street officers are faced with today), rank-and-file officers do not support this federal attack on the people's right to bear arms--even so-called assault weapons.

I did not come here to give the opinion of only myself. I represent a large number of officers from my department. Due to the lack of lead time I received when I was called to testify before this committee, I only had twenty-four working hours to circulate a petition to other Tulsa Police officers that permit them to voice their support for a repeal of the assault weapons/magazine ban. During that time I was able to procure 155 signatures, all full-time sworn officers...male, female, White, Black, American native and Asian. If I had more time, I'm sure the list of names would be much longer.

I would like to add one further thing before I close. We do not fear the weapons, no matter what they are, we fear the criminal behind the weapon. If you want to help us, attack the criminal...not the tool.

Gentleman, I spent a year of my life facing real assault weapons: AK-47s, M-16s, RPKs, RPDs, and heavy machine guns. I was in the first Marine regiment to see combat in South Vietnam, the 9th Marines. As a member of the 9th Marine Expeditionary Force in 1965-66, I waded steaming rice paddies, hacked through jungles, and climbed forest covered mountains, participated in three major operations, and faced both well-trained and determined Vietcong guerrillas and North Vietnamese soldiers for eleven months. In the end, I was awarded nine decorations including the Combat Action Ribbon, the Vietnam Cross of Gallantry, and the Purple Heart.

I've faced the muzzle end of real assault weapons, and I learned the hard way--to fear the man, not the device.

Let us work to repeal this expensive, ineffective, unconstitutional law and use our assets in a much more efficient manner elsewhere. I and the officers who I represent from our department ask that you repeal the gun ban.

Thank you for permitting me to speak before this honorable committee.

ENDNOTES:

1. Near Slauson and Alameda streets.
2. Hired September 9th, 1969. Two chiefs came out of my class, Drew Diamond and Bob Busby.
3. Tulsa is divided into three uniform division areas: Uniform Division East, Uniform Division North, Uniform Division Southwest. Additional divisions include Support Division (helicopters, motorcycles, bomb squad, Special Operations Team, Horse Patrol etc.); Detective Division; Records and Identification Division; Chief's Section; and Training Division (Academy).
4. Jack Purdie, Harry Stege, Bob Dick, Drew Diamond, Ron Palmer.
5. Robert LaFortune, Dick Crawford, Terry Young, Roger Randall, Susan Savage.
6. The bloody McAlester prison riot of July 1973 claimed three lives, all inmates killed by other inmates while 15 guards were held hostage. The Tulsa Police Department Tactical Squad, including this officer, responded to the riot and ended it after an all-night confrontation inside the rotunda (central cell control structure).
7. In Tulsa, we were known in the early 70's as the "Tactical" or TAC Squad.
8. Currently serving as senior officer of Air Support Unit.
9. The other incident concerned the "Butch Bastion Affair," wherein Mahlon "Butch" Bastion, holding his mother as hostage inside an apartment, held off TPD Special Operations Team officers with a semi-automatic carbine until, after being overcome with tear gas, turned a pistol on himself and committed suicide.
10. See attached copy of oath taken from Tulsa Police Department Policies and Procedures Manaul.

11. See attached copy of 42 USC 1863 as issued to TPD officers at the Tulsa Police Training Academy, In-service training, 1994.

The law goes on to say: "For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

12. Precedent: Nuremburg trials and My Lai court-martial. Also, civil and "vicarious" liability.

13. U.S. Supreme Court, Marbury vs. Madison.

14. SAJ, 2nd ed., S. 256 continues to say: "A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to supersede any existing valid law. Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superseded thereby...No one is bound to obey an unconstitutional law and no courts are bound to enforce it."

Mr. McCOLLUM. Well, Officer Roberts, we appreciate your eloquent statement, and we know how much trouble you've gone to, as several of the panel members have, to come here today to make the statements that you've made. And every word was sincere, I'm sure, and intended.

I just want to use your comments for one purpose, and that is to politely admonish other witnesses to try to condense what you say a little bit, because with as many members as we've got, we're going to be here a long time with three panels today, and I hope you understand that. That's not to say don't say a full statement, and that's not to say that every word that Lieutenant Tueller and Officer Roberts gave and Chief Wilson is not—was not heard and important, and that's not to say don't give your statement, but, as I move on, Officer Jennings and Officer Rodriguez and Sergeant Hinz, if you could, I would appreciate any way you could condense a little bit of what you may otherwise be saying. Thank you.

Officer Jennings.

**STATEMENT OF OFFICER BRYANT JENNINGS, PRESIDENT,
MEMPHIS POLICE ASSOCIATION, MEMPHIS, TN**

Officer JENNINGS. Mr. Chairman, distinguished members of the subcommittee, my name is Bryant Jennings. I've been a patrolman for 15½ years with the Memphis Police Department. I'm currently serving as the president of the Memphis Police Association, and we represent in a collective bargaining situation approximately 1,400 members. I don't propose to speak for the unanimous 1,400. However, I do speak for a majority of the members.

I'd like to thank you for this opportunity. I'd like to establish my credentials prior to giving my statement. My primary duties involve uniform patrol of the Memphis streets. I also have extensive training and experience as a member of the department's crisis intervention team and as a hostage negotiator. Those special details have brought me into contact with a variety of violent incidents. I have equally extensive training and experience within the range of illegal drug use, how they affect human behavior, and the variety of techniques utilized to restrain those under the influence. In short, during my law enforcement career I've seen most everything.

I've confiscated a multitude of weapons from various felons. I've had the opportunity to dodge bullets, and I have had occasion where I have been forced to fire my service weapon under hostile circumstances. After all is said and done, I can say this with all my professional and personal sincerity: firearms owned and used by responsible citizens present no danger to law enforcement officers or to the community. In fact, I sincerely believe armed and trained responsible citizens are an important asset to the community.

Congressman Bryant, you are from my hometown and you may remember the incident that I'm about to discuss. It, too, occurred in Memphis. I did not include this here, but it occurred within two blocks of where my sister lived. So it's very personal to me.

It's a story of one very old and very gentle, but yet very tough silver-haired Memphis resident who happened to be armed and dangerous to the criminals who inhabit her neighborhood. The

gentle lady in question was approximately 70 years of age. She lived in her home most of her life and refused to yield her home, her possessions, or to alter her lifestyle because of her fear of criminals. No matter how bad her neighborhood became and no matter how rampant the drug trade grew or how brazen the stickup artists became, she refused to move. It was her home. She was resolved to take her stand in defense of what she believed in at her little home on Reese Avenue. I might mention that she also possessed a pistol.

On this particular occasion, an individual armed with a knife approached her and attempted to rob her in the confines of her driveway in the front of her home. She responded by drawing her pistol, firing, and disabling the assailant. I can tell you without a doubt, though, that without her pistol, that 70-some-old grandmother would not be alive today, nor possibly any of the other residents in that neighborhood.

Tennessee has passed within the last year a law that allows qualified citizens to carry concealed weapons. It was innovative and went a long way to allow citizens the right to protect and defend themselves. Tennessee law enforcement does not fear the idea of honest, responsible armed citizens on our streets who are armed. However, we do detest and abhor violent armed criminals.

Guns in the hands of honest citizens present us with no problems. In fact, in my opinion, the fact that an upstanding citizen is armed and trained to use that weapon is a great source of comfort to myself and to my colleagues on the Memphis Police Department.

As has been stated earlier in other officers' testimony, we represent a very thin blue line, and that blue line becomes thinner and thinner as it goes along. Our department is understaffed. Oftentimes during my patrol duties I've found myself to be confronted by armed felons with my closest backup usually 5 to 10 minutes away. Life-and-death armed conflicts usually resolve themselves in less than a minute or two. Yes, it seems like an eternity if you're going through it, but, believe me, those 60 to 120 seconds take a long time in slow motion to pass. God forbid I or any one of my colleagues should find themselves facing down an armed criminal, but if they should—and chances are pretty fair in today's times they will—the presence of an armed and trained private citizen beside us presents a greater comfort than waiting for my colleagues to travel, no matter how fast, a great distance to be at my side. Make no mistake, I love and respect my fellow officers, but sometimes you just can't get there in time.

In all my years on the Memphis streets I have not seen a single criminal armed with a so-called assault weapon, whether a true selective-fire assault weapon or semiauto lookalike that seems to alarm so many in the press and in Congress. I know firsthand the type of firearms banned under last year's crime bill, and I know them because I own them and I enjoy shooting them.

In fact, I had recently purchased, prior to the ban, a .22 rifle for my 14-year-old son. Now that rifle was banned last year as one of the dreaded assault weapons listed in the crime bill. So if you or any of your colleagues want to know my opinion on assault weapons, let me assure you that I like them. I think they are quite suitable for my children and my family to use at the firing range.

To suggest, as some in Congress and many in the press do repeatedly, that so-called semiautomatic rifles or pistols present a clear and present danger to police and the public, I would only say come with me and my family to the range. Meet my family. Get to know the real reason why people like myself buy them and own them and shoot them. They're fun and are used for self-defense. The right to own them, the right to bear them is fundamental in this Constitution. I repeat my earlier statement: they present no danger to law enforcement or to the community in the proper hands.

I'm a law enforcement professional and I have direct experience in the first line of crime control dealing with and arresting violent criminals, and like all law enforcement officers, I've sworn an oath a decade and a half ago to uphold the laws of this land. The Constitution and the Bill of Rights stand at the core of what we call the laws of this land. I respect the oath I took and I respect the Constitution. I respect the Bill of Rights, including the second amendment. I simply wish those in the press and a few folks in the White House shared that same respect.

Congressman Bryant and the other esteemed Congressmen of this committee, I would like to, in keeping with the second amendment rights of your constituents, please formerly request that you repeal this restrictive bill.

Thank you very much for this opportunity to speak.

[The prepared statement of Officer Jennings follows:]

PREPARED STATEMENT OF OFFICER BRYANT JENNINGS, PRESIDENT, MEMPHIS POLICE
ASSOCIATION, MEMPHIS, TN

Mr. Chairman and distinguished members of the subcommittee, my name is Bryant Jennings, I am a patrolman with 15 and a half years experience with the Memphis Tennessee Police Department and I am president of the Memphis Police Association, the independent collective bargaining agency representing 1400 members of the Memphis police department.

I would like to thank you for the opportunity to speak about this very important issue.

First I would like to establish my credentials for what I am about to say.

My primary duties involve uniform patrol of Memphis' streets. I also have extensive training and experience as a member of my department's Crisis Intervention Team and as a hostage negotiator. Those special details bring me into contact with a variety of violent incidents. I've equally extensive training and experience with the range of illegal drug use, how they affect human behavior, and the variety of techniques to restrain those under their influence. In short, during my law enforcement career, I've seen most everything.

I've confiscated weapons from felons. I've dodged bullets and I've fired my service weapon under hostile circumstances. After all is said and done, I can say this with all my professional and personal sincerity:

Firearms owned and used by responsible citizens present no danger to law enforcement officers or to the community. In fact, I sincerely believe armed and trained responsible citizens are an important asset to any community.

Congressman Bryant, you may remember the incident I am about to discuss. It occurred in Memphis.

It is a story of one very old, very gentle, very tough silver-haired Memphis resident who happens to be armed and dangerous to the criminals who inhabit her neighborhood. The gentle lady in question is pushing seventy. She's lived in her home most of her life and refuses to yield her home, her possessions, or to alter her life-style for fear of criminals. No matter how bad her neighborhood became. No matter how rampant the drug trade grew or how brazen the stick-up artists became. She refused to move. She was resolved to take her stand in defense of what she believed at her little home on Reese Street. I might mention that she also owns a pistol.

When armed thugs attempted to rob her on her front porch at knife-point, she drew her pistol and fired. To date this lady helped two felons meet their maker.

I can tell you without a doubt. Without her pistol, that 70-ish grandmother would not be alive today.

Now Tennessee passed a state law about a year ago that allows qualified citizens to carry concealed weapons.

Tennessee law enforcement do not fear the idea of honest armed citizens on our streets. Yes, we abhor and detest armed violent criminals. But, guns in the hands of honest citizens present us with no problems. In fact, in my opinion, the fact that an upstanding citizen is armed and trained to use that weapon is a great source of solace to me and to my colleagues on the Memphis police department.

If, during my patrol duties, I find myself confronted by an armed felon my closest backup is usually five to ten minutes away. Life and death armed conflicts usually resolve themselves in less than a minute or two. Yes, it seems like an eternity if you are going through it, but believe me those 60 to 120 seconds take a slow-motion life time to pass.

God forbid I or anyone of my colleagues should find ourselves facing down an armed criminal, but if we should, and chances are pretty fair we will, the presence of an armed and trained private citizen beside me presents a greater comfort than waiting for my colleagues to travel, no matter how fast, to be at my side. Make no mistake, I love and respect my fellow officers. But, sometimes you just can't wait until they get there.

In all my years on Memphis' streets, I have never seen a single criminal armed with a so-called assault weapon, whether a true selective-fire assault weapon or a semi-auto look-alike that seems to alarm so many in the press and in the last Congress who don't seem to be here today to listen to my views.

I know first hand the type firearms banned under last year's crime bill. I know them because I own them and enjoy shooting them. In fact, I recently bought a .22 rifle for my 14-year-old son. That rifle was banned last year as one of the dreaded assault weapons listed in the crime bill.

So if you or any of your colleagues want to know my opinion on assault weapons, let me assure you that I like them and I think they are quite suitable for my children to use at the firing range.

To suggest as some in Congress and many in the press do repeatedly that so-called semi-automatic rifles or pistols present a clear and present danger to police and the public, I would only say come

with me to the range. Meet my family. Get to know the real reason why folks like myself buy them and own them and shoot them. They are fun. And, I repeat my earlier statement, they present no danger to law enforcement or to the community.

Members of the Subcommittee. I am a law enforcement professional. I have direct experience in the first line of crime control, dealing with and arresting violent criminals. And, like all law enforcement officers, I swore an oath a decade and a half ago to uphold the laws of this land.

The Constitution and the Bill of Rights stand at the core of what we call the laws of the land. I respect the oath I took. I respect the Constitution. I respect the Bill of Rights including the Second Amendment. I simply wish those in the press and a few folks in the White House shared that same respect.

Congressman Bryant and other esteemed Congressmen on this committee, in keeping with the Second Amendment rights of your constituents, please repeal this restrictive bill.
Thank you.

Mr. MCCOLLUM. Thank you, Officer Jennings.

Before I introduce Officer Rodriguez, I believe Congressman Schiff has come in and would like to welcome him.

Congressman Schiff.

Mr. SCHIFF. All right, thank you, Mr. Chairman. I'm sorry I was a little delayed from being here right at the beginning of the hearing.

I just want to take a moment to personally welcome Officer Steve Rodriguez from the Albuquerque Police Department to this hearing. As I recall, Officer Rodriguez joined the department about the same time I became district attorney back about 14 years ago or 15 years ago or so in the Albuquerque area, and he is best known—I don't know if he knows it or not, but he's best known among prosecutors for having put together the Albuquerque Police Department's repeat offender project.

And I just want to say that although I welcome hearings and discussions on all aspects of law enforcement from firearms legislation to intervention and prevention—I think it's all worthwhile—if we don't keep the repeat offender off of the street, nothing else is going to matter, just guaranteed, unfortunately.

So I want to welcome Officer Rodriguez to this hearing.

Thank you, Mr. Chairman.

Mr. MCCOLLUM. Officer Rodriguez, if you would please give us your testimony.

STATEMENT OF OFFICER STEVE RODRIGUEZ, ALBUQUERQUE POLICE DEPARTMENT, ALBUQUERQUE, NM

Officer RODRIGUEZ. Thank you, Mr. Chairman, Congressman Schiff, members of the committee.

Again, my name's Officer Steve Rodriguez. I'm with the Albuquerque Police Department. I'm here not to represent the police department as an entity, but rather to represent those officers from my police department that contacted me when they heard I was coming, all the Bernalillo County sheriff's deputies who contacted me, the FBI agents who gave me paperwork before I left, the ATF agents who phoned me before I could get on the plane. It was very pleasing to me to have the support of all those different agencies and officers as they sent me on my way.

I'm hear to discuss with you the second amendment, the Bill of Rights, and how I as a law enforcement officer relate to those rights. This is one of the universal things that I have in common with all other police officers nationwide. Just like the 535 Members of the U.S. Congress, we as law enforcement officers took a solemn oath of office to defend the Constitution of the United States and the Bill of Rights. This is one of the most profound of our duties; yet, it is often one of the most neglected of our responsibilities. This oath that we swore units us with all those law enforcement officers of the past, with all those of the future who have yet to swear the oath. It's a testimony to the enduring nature of law enforcement's commitment to upholding and protecting the letter and the spirit of the Constitution and all of the Bill of Rights, which includes 10 amendments.

Most police officers are staunch opponents of any and all efforts to erode the second amendment rights. To take a position to the

contrary would be grossly negligent and to ignore our sworn oath of office.

I, myself, swore this office 14 years ago. After 3 years in the U.S. Marine Corps, I joined the Albuquerque Police Department, and since then I have worked the streets. My entire time has been dealing with actual criminals. I've learned to anticipate a criminal's actions and intentions. I've had to discharge my firearm in the service of my city and the citizens. One year alone, I was involved in three shooting incidents.

The first incident involved a man who had just been sentenced to 10 years in prison. He served 2 years. He committed aggravated battery, which means he attacked two officers who were trying to apprehend him on parole violation charges. He was sent back to Texas, rereleased. When I encountered him that night, he had rammed the back of an unarmed police service aide car. The young man, who was unarmed, called for an additional officer, and a sergeant responded. The man pulled over onto a bridge, pulled out an infant, and then held it over the bridge. The man appeared to be an unstable mental case, and he was threatening to throw the baby off the bridge. I had to respond and resolve the situation. I still to this day do not understand why that man was out and why he attacked those two police officers and why he dangled that little kid off the edge of the bridge, but he did it. He was supposed to be in prison.

The second incident was an armed—was a felon who was barricaded inside of a building. He had several charges against him for attempting to blow up a house that had been owned by his spouse. He had threatened her with weapons, and, yet, he was still out on the streets.

Then the last one was by an illegal alien who was committing crimes inside of this country.

I have a personal responsibility to protect the citizens of my city. I feel that members of this body and other bodies also have a responsibility, that once I do catch them, to do something with them. I mention this not because I seek your admiration or sympathy, but rather because I feel that it's important to identify myself as one of the thousands of police officers on the streets of America daily. I am neither a political cop or a desk jockey pushing paperwork. The total of my 14 years has been spent in specialized units, including 10 years in the tactical section.

I have been involved in bringing two pilot programs to fruition, as you heard. The first was a repeat offender project. We targeted career criminals, and this has become my area of expertise and where I spend the bulk of my work on the force.

The second pilot program revamped the previously dormant Albuquerque Police Department's intelligence unit. My work with intelligence dealt with career criminals, and I am now once again at the side of the police SWAT team. As a cop with plenty of street time, I can attest to the fact that the myth of gun control is just that; it has absolutely no bearing on reducing violent crime. It's feel-good legislation.

In fact, I would argue the reverse. An attacker is much more likely to approach someone that he perceives as unarmed and helpless. Equally useless is the ridiculous approach of disarming honest

people. As a police officer, I know that I cannot assume personal responsibility for all the men, women, and children of Albuquerque at all times. Usually, the only persons at the scene of crime are the attacker and the victim. Police officers respond as quickly as time, distance, and logistics allow, but most crimes occur in less than a minute and without law enforcement present. The victim must protect his or herself during the crime and until law enforcement assistance can arrive. I've seen it a thousand times. That's life on the street, and law enforcement is forced into a reactive role.

But crimes still occur. Gun control isn't crime control. It doesn't control crime in any way. Gun control only affects crime in one way. It helps to ensure that the victim will be unarmed. It all comes back to the fact that our criminal justice system has failed. I feel this perhaps more than most. Through the repeat offender program and its outgrowths, targeting career criminals, I see the same criminals time and time again. It's almost become a joke in my department, a pseudocontest to see how many times we can arrest the same person during our career and have him sentenced.

I sighted a woman I had previously arrested walking down the streets one day and immediately stopped her. She didn't understand why I would want to have contact with her. I had a very good reason. I recognized her as someone who had been arrested and charged 97 time—97. But out of the 97 arrests, she had only 16 convictions—convictions for drug trafficking, heroin possession, armed robbery. Through plea bargaining and standard court backlog, she had only served time for 16 convictions and never served out a full sentence for those, and so she was back out on the streets, I believe to commit additional crimes and create new victims.

Maybe that sounds cynical to you. After all, people are supposed to be able to change; right? And maybe people do, but 80 to 90 percent of the 300 or so arrests that I'm involved in every year involve prior convictions. The criminals that I dealt with in the repeat offender project averaged approximately 15 arrests for each person. Through plea bargaining, that gives them approximately two or three convictions with reduced sentences, and so I see the same people time and time again.

When a locate is given out in my town, usually a police officer immediately whips out his pocket notebook to give you the date of birth, the locations and addresses where this person lives, because he's arrested him so many times. That's the basis for the crime problem in America. A person is arrested multiple times but receives very few convictions and shorter sentences through plea bargaining and is then released because of early prison good time. I don't know what good things you do in prison, but there must be a lot of it.

A person could steal 30 or so cars before he receives a single conviction, for which he'll receive probation or perhaps a few months or so behind bars. Once out of prison, he can steal another 30 to 60 cars before he's ever locked up for any extended period of time. Meanwhile, he's put together quite a lucrative system. He doesn't have any other skills, and he sees that doing the cost of business is relatively minor. These criminals will fall asleep in court. They

fall asleep during their sentence hearings because they just don't care. To them, it's just a routine they go through.

And this is the problem: there is a total lack of fear of our criminal justice system by the criminal. I don't need more money. I don't need more cops, and I certainly don't need additional firearms restrictions. What we need is enforcement of existing laws. We need to keep the career criminals behind bars. We need tough judges that enforce current sentencing guidelines. This will intimidate potential criminals and discourage career criminals. If criminals weren't released so quickly and so often, we wouldn't have career criminals, or at least not as nearly as many as we face daily. They are simply released too early, released because of overcrowding, released because of laws that prevent putting two criminals in the same cell, and so they're back on the streets.

Another part of the problem is that the system doesn't prosecute the people we do catch. As I said, I can arrest somebody several times, and he'll only get two or three convictions. Part of the problem is plea bargaining at all levels. The problem with Federal laws, which you deal with, is that a lot of the U.S. attorneys will not present cases sent forward by my Federal counterparts. It seems people only become U.S. attorneys for one reason: as a stepping stone to Federal judgeship or other prominent political positions. And judgeships, in my experience, are generally being awarded due to win/loss records and politics. So assistant U.S. attorneys will only take airtight, easy-win cases that are politically correct at the time. Because of this, many cases are not brought before the court, and so we lose another possible conviction, and another career criminal is back on the streets until the next time, which brings us back to the second amendment.

Our crime problem is not with the—is with the system and not the weapon. The weapons that I see are small caliber, easily concealable, mostly Jennings and Ravens brands. They only hold five or six rounds, and the average gun that we take off the street has only had two or three rounds fired. I've spoken with our ballistics expert and I've researched the records going back through 1993. During that time, we've brought in two semiautomatic rifles. Both were 22 sporting rifles. Both these weapons were used in the commission of a crime, and so it's just another show that assault weapons, as banned by this administration, are not the problem.

And so I ask you today, please don't limit our second amendment rights. Don't place a law enforcement officer in the position of enforcing the law in violation of a sworn oath. Instead, give us tougher sentencing and make the criminal justice system intimidating. Right now, we get more time for misdemeanors out of metropolitan court judges than we do for felonies out of State district court judges. And that's my partners and I get the pleasure of arresting the same person again and again; time after time, they have created more victims.

It's disheartening and demoralizing. We're facing a new trend in law enforcement, lower morale on the force. People come in with a blue night mentality and a commitment to hard work, but after seeing their cases thrown out or bargained down, after seeing repeat offenders committing crimes on the streets time after time, they develop a production-line mentality. Their heart's just not in

their work anymore. They know the routine. They know what to expect, and they know that they will probably arrest the same individual again at a later date.

We need your help to put an end to this cycle. I know that the 104th Congress is committed to dealing with this problem, but the focus needs to be on effective sentencing and not on firearms.

That concludes my prepared statement. The last thing I'll tell you is, whenever you see all those posters that shows the SWAT team going in, I'm the face behind the mask. I wear the black hood. I wear the helmet. I carry the submachineguns. All these laws that are passed by this body and others, I'm the one that is expected to go out and enforce these things. I would ask you to certainly consider your actions.

Thank you very much for your time.

[The prepared statement of Officer Rodriguez follows:]

PREPARED STATEMENT OF OFFICER STEVE RODRIGUEZ, ALBUQUERQUE POLICE
DEPARTMENT, ALBUQUERQUE, NM

Chairman McCollum, members of the Subcommittee, I am Officer Steve Rodriguez of the Albuquerque, New Mexico Police Department. I am here today to discuss with you the Second Amendment and the Bill of Rights, and how I, as a law enforcement officer, relate to those rights. This is one of the universal things that I have in common with all other police officers nationwide. Just like the 535 members of the United States Congress, we as law enforcement officers took a solemn oath of office to defend the Constitution of the United States and the Bill of Rights; this is one of the most profound of our duties, yet it is often one of the most neglected of our responsibilities. This oath that we swore unites us with all of the law enforcement officers of the past, and with all of those in the future who have yet to swear the oath; it is testimony to the enduring nature of law enforcement's commitment to upholding and protecting the letter and the spirit of the Constitution and the Bill of Rights, which includes all 10 of the

amendments. Most police officers are staunch opponents of any and all efforts to erode Second Amendment rights. To take a position to the contrary would be to grossly neglect and ignore our sworn oath of office.

I myself swore this oath fourteen years ago. After three years in the United States Marine Corps, I joined the Albuquerque Police Department. And since then I have worked the streets. I've learned to anticipate a career criminal's actions and intentions. I've discharged the firearm my department issued to me. In one year alone, I was involved in three shootings, including two hostage situations. I mention this not because I seek your admiration or sympathy but rather because I feel that it's important to identify myself as one of the thousands of police officers on the streets of America daily. I am neither a political cop nor a desk jockey taking fingerprints and pushing paperwork.

Twelve of my fourteen years on the force have been spent with the Specialized Units, including ten years with the tactical section. I have been involved in bringing two pilot programs to fruition. The first was the Repeat Offender Project, which targeted career criminals; this has become my area of expertise, and the bulk of my work with the force. The second pilot program revamped the previously dormant Albuquerque Police Department's Intelligence Unit; my work in intelligence also dealt with career criminals. I am now, once again, with the SWAT team.

As a cop with plenty of "street time," I can attest to the fact that the myth of gun control is just that -- it has absolutely no bearing on reducing violent crime; in fact I would argue the reverse. An attacker is much more likely to

approach someone that he perceives as unarmed and helpless. Equally useless is the ridiculous approach of disarming honest people. As a police officer I know that I cannot assume personal responsibility for all of the men, women, and children of Albuquerque. Usually, the only persons at the scene of the crime are the attacker and the victim. Police officers respond as quickly as time, distance, and logistics allow. But most crimes occur in less than a minute and without law enforcement presence. The victim must protect his or herself during the crime and until law enforcement assistance can arrive. I've seen it a thousand times. That is life on the street, and law enforcement is forced into a reactive role. The crimes still occur; gun control isn't crime control, it doesn't control crime in any way. Gun control only effects crime in one way -- it helps to insure that the victim will be unarmed.

It all comes back to fact that our criminal justice system has failed. I see this perhaps more than most. Through the Repeat Offender Program and its outgrowths, I target career criminals. And I see the same criminals again and again. It has almost become a joke in my department, a pseudo-contest to see how many times we can arrest the same person during our careers. I sighted a woman I had previously arrested walking the streets one day and immediately stopped her. She couldn't figure out why I wanted to talk to her. I had very good reason -- I recognized her as someone who had been arrested and charged 97 previous times. 97 times! But out of 97 arrests, she had only 16 convictions -- convictions for drug trafficking, heroin possession, armed robbery... Through plea bargaining and standard court backlog, she had only served time for 16 convictions, and never served out a full sentence for those. And so she was back on the streets. I believe to commit additional crimes and create new victims.

Maybe that sounds cynical to you -- after all, people can change their ways, right? Maybe some people do. But 80-90% of 300 arrests that I am involved in each year involve prior convictions. The criminals that I dealt with in the Repeat Offender Project averaged 15 prior arrests each. Through plea bargaining, that gives them approximately two or three convictions, with reduced sentences. And so I see the same people time and time again.

That is the basis of the crime problem in America. A person is arrested multiple times, but receives very few convictions and shorter sentences through plea bargaining and is then released early because of prison "good time." And so crime pays. A person can steal 30 cars before he receives a single conviction, for which he'll receive probation, or perhaps a few months or so behind bars. Once out of prison, he can steal another 30 to 60 cars before he's ever locked up for any extended period of time. Meanwhile, he's put together quite a lucrative system. He doesn't have any other skills. And he sees that the cost of doing business is relatively minor. These criminals will fall asleep in court, they'll fall asleep during their sentencing hearings. They don't care. To them, it's all routine.

And this is the problem -- there is a total lack of fear of our criminal justice system by the criminal. We don't need more money, we don't need more cops, and we certainly don't need additional firearms restrictions. What we need is enforcement of existing laws -- we need to keep career criminals behind bars. We need tough judges that enforce current sentencing guidelines. This will intimidate potential criminals and discourage career criminals. If criminals weren't released so quickly and so often, we wouldn't have such a thing as a

career criminal, or at least not nearly as many as we face daily. They are simply released too early -- released because of overcrowding, released because of laws that prevent putting two criminals in the same cell. And so they are back on the streets.

Another part of the problem is that the system doesn't prosecute the guys we catch. As I said, I can arrest someone 15 times, and he'll only get two or three convictions. Part of the problem at all levels is plea bargaining. The problem with federal laws is that Assistant United States Attorneys won't prosecute the cases presented by my federal counterparts. It seems most people only become an Assistant U.S. Attorney for one reason -- as a stepping stone to a federal judgeship. And judgeships are awarded because of win/loss records and politics. So Assistant U.S. Attorneys will only take airtight, easy win cases. Because of this, many cases are not brought before the court. And so we lose another possible conviction, and another career criminal is back on the streets. Until the next time.

Which brings us back to the Second Amendment. Our crime problem is with the system, not the weapon. The weapons that I see are small caliber, easily concealable. Mostly Jennings and Ravens brands. They only hold five or six rounds. And the average gun that we take off the streets has had only two or three rounds fired. I've spoken to our ballistics experts and they've told me that between 1993 and 1995, we only brought in two semiautomatic rifles -- 22s -- used in a crime. The weapons aren't the problems.

And so I ask you today, please don't limit our Second Amendment rights.

Don't place a law enforcement officer in the position of enforcing a law in violation of his sworn oath. Instead, give us tougher sentencing. Make the criminal justice system intimidating. Right now, Metropolitan judges are giving longer sentences for misdemeanors that district judges are giving for felonies. THAT is a crime. And that is why my partners and I get the pleasure of arresting the same persons again and again, time after time after they have created more victims. It's disheartening and demoralizing. We are facing a new trend in law enforcement -- lower morale on the force. Guys come in with the blue night mentality and a commitment to hard work. But after seeing their cases thrown out or bargained down, after seeing repeat offenders committing crimes on the streets time after time, they develop a production line mentality. Their heart is not in it because they know the routine, they know what to expect, and they know that they will probably arrest this same individual again, at a later date.

We need your help to put an end to this cycle. I know that the 104th Congress is committed to dealing with this problem. But the focus needs to be on effective sentencing and not on firearms. Thank you.

Mr. McCOLLUM. Thank you, Officer Rodriguez.
Sergeant Hinz.

**STATEMENT OF SGT. WILLIAM J. "PICKLES" HINZ,
MINNEAPOLIS POLICE DEPARTMENT, MINNEAPOLIS, MN**

Sergeant HINZ. Mr. Chairman, members of the subcommittee, I thank you for giving me the time to appear here. I also am on my own time.

I am William Hinz, presently assigned to the homicide division of the Minneapolis Police Department. Prior to moving into homicide, I spent the previous 8 years in our crime lab, both processing crime scenes in the field and processing the material, evidence, that we brought back to our unit. I spent time prior to that in our decoy unit, and the first 13 years on the street in uniform.

During my 24 years with the Minneapolis Police Department, I've been in direct contact with every type of crime and dealt directly with every sort of criminal, and seen virtually every type of weapon used by Minneapolis criminals. I can report that once we did have a military-style semiautomatic assault weapon involved in a crime. It was an SKS, and it was used to kill a house. I say this because none of the four people in the vehicle were convicted of any type of crime relating to that weapon. The only thing we ever recovered was the weapon itself, and the only sustained was to the house.

In fact, to the best of my knowledge, there has not been one incident in the last 5 years where Minneapolis has used the State's mandatory 5-year minimum penalty for the use of a firearm in the commission of a crime in any of the charges that have been brought forth. That is generally the first thing that is plea bargained away.

Please forgive any suggestion that I might be making light of this or any other incident. My description simply reflects the frustration common to virtually every member of the Minneapolis Police Department. Frustration is over the court's refusal to prosecute serious crime.

To give you an example of this, a gentleman was convicted of possession of a short-barreled shotgun in Minneapolis. Now this is the legal term for a sawed-off, and if any weapon can be described as a firearm designed by criminals for criminals with a single purpose—namely, the commission of crime—I would suggest that a shotgun with its barrel lopped off below the legal limit fits that bill. I would also remind you that simple possession of a sawed-off shotgun is a Federal felony, 10 years in jail, and a \$250,000 fine. Our court system gave this gentleman 2 years' probation and no Federal charges were ever brought.

Assault weapons or so-called assault weapons are not a threat to the citizens of Minneapolis. As a matter of fact, the last extensive study of our property route and examination of all the firearms that had both been confiscated and turned in to our property room showed that less than 3/10ths of 1 percent of those firearms could be considered under the broad classification of assault weapon.

Before joining the homicide division, I said I spent 8 years in the crime lab. Our division processed all the firearms that come through used in crime. We have probably in the 8 years that I

spent there processed less than a dozen firearms that would fall under Congress' broad category of assault weapons.

To date in 1995, our homicide division is investigating 23 homicides, nearly all of which have been criminal members of the criminal element that have been killed by their colleagues. These are not our innocent middle-class citizens that are being gunned down. In terms of this group and their worth to society, we have a tendency to refer to this type of shooting as damaged, occupied clothing. This is not to minimize their life; it merely is the fact that we've become over a period of time—realized that the people that are dying on our streets—in the last 10 years, the true innocent victim has remained constant. Our homicide rate has doubled, and the majority of these people have been illegal pharmaceutical salesmen and drug members that merely flash the wrong gang sign in the wrong location.

Part of the frustration that comes with 24 years on the force is the fact that we know who the criminals are; we deal with the same names and faces on a daily basis, and the reason we deal with the same people multiple times goes back to the fact that it's virtually impossible to get prosecutors to bring substantial charges, and if and when they bring any charges at all against this collection of criminals, we don't find that the penalty fits the crimes that are being committed.

The feeling among Minneapolis police officers about carrying or having honest citizens carrying or owning guns I'll answer by giving a little story. A few years ago, an officer from Hutchinson, MN, was killed by a hardcore criminal from our town. He came back into Minneapolis and stole a car, and during the ensuing chase that ran into our rural area, the best hope by most of the officers that I spoke with was that his car would break down, he'd go to a farm for assistance or to attempt to steal a new car, and would run into an appropriately armed resident who was both capable and willing of using his firearm, and he would mete out some sort of justice, because we didn't feel the court systems would. And that's about how much faith we have in our current criminal justice system.

We do not support the ban on assault weapons or pistols with high-capacity magazines. We do support law-abiding citizens who own firearms and are willing to use them. Armed honest citizens pose no threat to their families, neighbors, or community. Disarmed citizens are little more than prey waiting for a criminal predator.

All the debate over whether or not a citizen who has not committed a crime should be allowed to own a firearm for defense, whether that firearm is a so-called assault-style weapon or a .22 caliber popgun, pales by comparison to the need for a radical change in our criminal justice system. We must make the punishment for the crime far more feared than the benefits of the crime itself.

Thank you, gentlemen, for your time.

[The prepared statement of Officer Hinz follows:]

PREPARED STATEMENT OF SGT. WILLIAM J. "PICKLES" HINZ, MINNEAPOLIS POLICE
DEPARTMENT, MINNEAPOLIS, MN

MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE THANK YOU FOR GIVING ME
THE CHANCE TO APPEAR BEFORE YOU TODAY.

MY NAME IS WILLIAM J. HINZ. I AM PRESENTLY ASSIGNED TO THE
HOMICIDE DIVISION OF THE MINNEAPOLIS POLICE DEPARTMENT. PRIOR TO
MY MOVING TO HOMICIDE, I SPENT EIGHT YEARS WITH MY DEPARTMENT'S
CRIME LAB WHERE I PROCESSED ALL MAJOR AND MINOR CRIME SCENES.
BEFORE THAT I WAS A MEMBER OF THE STREET CRIMES DECOY UNIT. I
SPENT MY FIRST DOZEN YEARS ON THE FORCE ON UNIFORM PATROL.

DURING MY 24 YEARS WITH THE MINNEAPOLIS POLICE, I'VE BEEN IN
DIRECT CONTACT WITH EVERY TYPE OF CRIME, DEALT DIRECTLY WITH EVERY
SORT OF CRIMINAL, AND SEEN VIRTUALLY EVERY TYPE OF WEAPON USED BY
MINNEAPOLIS CRIMINALS.

I CAN REPORT THAT WE DID HAVE ONE MILITARY-STYLE SEMI-AUTOMATIC
RIFLE INVOLVED IN A CRIME ONCE. IT WAS AN SKS RIFLE AND IT KILLED
A HOUSE. I SAY THAT DELIBERATELY BECAUSE NOT ONE OF THE FOUR
INDIVIDUALS IN THE CAR WITH THE WEAPON WAS CONVICTED OF FIRING IT

AND ONLY THE HOUSE SUSTAINED BULLET DAMAGE. SO OFFICIALLY WE DECLARED THE RIFLE RESPONSIBLE FOR KILLING THE HOUSE.

IN FACT, TO THE BEST OF MY KNOWLEDGE THERE HAS NOT BEEN ONE INCIDENT IN THE LAST 5 YEARS WHERE MINNEAPOLIS HAS USED THEIR FIVE YEAR MINIMUM MANDATORY PENALTY FOR USE OF A FIREARM IN THE COMMISSION OF A CRIME. THE GUN IS THE FIRST CHARGE PLEA BARGAINED AWAY.

PLEASE FORGIVE ANY SUGGESTION THAT I MIGHT BE MAKING LIGHT OF THIS OR ANY OTHER INCIDENT. MY DESCRIPTION SIMPLY REFLECTS THE FRUSTRATION COMMON TO VIRTUALLY EVERY MEMBER OF THE MINNEAPOLIS POLICE FORCE. THAT FRUSTRATION IS OVER THE CITY'S REFUSAL TO PROSECUTE SERIOUS CRIMES.

LET ME GIVE YOU AN EXAMPLE. THIS WEEK A GENTLEMAN WAS CONVICTED OF POSSESSION OF A SHORT-BARRELED SHOTGUN. THAT IS THE LEGAL TERM FOR A SAWED-OFF SHOTGUN.

NOW IF ANY WEAPON CAN BE CHARACTERIZED AS A FIREARM DESIGNED BY CRIMINALS, FOR CRIMINALS, WITH A SINGLE PURPOSE, NAMELY THE COMMISSION OF A CRIME, I WOULD SUGGEST THAT A SHOTGUN WITH ITS BARREL LOPPED OFF BELOW THE LEGAL LIMIT FITS THAT BILL.

I WOULD ALSO REMIND YOU THAT SIMPLE POSSESSION OF A SAWED-OFF SHOTGUN IS A FEDERAL FELONY. TEN YEARS IN JAIL AND \$250,000 FINE.

WHAT DID MINNEAPOLIS' COURT SYSTEM SLAP THE FINE GENTLEMAN WITH?

TWO YEARS PROBATION. NO FEDERAL CHARGES WERE BROUGHT.
ARE SO-CALLED "ASSAULT WEAPONS" A THREAT TO THE CITIZENS OF
MINNEAPOLIS?

THE ANSWER IS SIMPLE...NO

BEFORE JOINING THE HOMICIDE DIVISION LAST YEAR, I SPENT EIGHT
YEARS IN THE CRIME LAB/IDENTIFICATION DIVISION; WHICH PROCESSES
ALL THE EVIDENCE RECOVERED BY POLICE DURING THE INVESTIGATION OF A
CRIME. ONE OF THE DIVISIONS MAJOR RESPONSIBILITIES IS TO PROCESS
ALL OF THE FIREARMS WHICH ARE USED DURING A CRIMINAL OFFENSE.
DURING MY EIGHT YEARS, THE DIVISION PROCESSED LESS THAN A DOZEN
FIREARMS WHICH WOULD FALL UNDER THE BROAD DEFINITION OF THE
CLINTON CRIME BILL'S "ASSAULT WEAPONS" CATEGORY.

TO DATE IN 1995, THE HOMICIDE DIVISION IS INVESTIGATING 23
HOMICIDES. NEARLY ALL OF WHICH ARE MEMBERS OF THE CRIMINAL ELITE,
KILLED BY THEIR COLLEAGUES. THEY ARE NOT HONEST, UPSTANDING
MIDDLE-CLASS CITIZENS.

IN TERMS OF THEIR WORTH TO SOCIETY, THEIR CONTRIBUTION TO SOCIETY,
AND THEIR DESIRE TO BE RESPONSIBLE AND PRODUCTIVE MEMBERS OF
SOCIETY, I WOULD HAVE TO SAY THAT THEY ARE LITTLE MORE 'THAN
DAMAGED, OCCUPIED BUNDLES OF CLOTHES. IF I SOUND CYNICAL I'M
SORRY. IF I OFFEND ANYONE I'M SORRY.

BUT PART OF THE FRUSTRATION THAT COMES WITH 24 YEARS ON THE FORCE

IS THE FACT THAT WE KNOW WHO THE CRIMINALS ARE. WE DEAL WITH THE SAME NAMES AND FACES ON A DAILY BASIS. AND THE REASON WE DEAL WITH THE SAME PEOPLE MULTIPLE TIMES GOES RIGHT BACK TO THE FACT THAT IT IS VIRTUALLY IMPOSSIBLE TO GET CITY PROSECUTORS TO BRING SUBSTANTIAL CHARGES, IF AND WHEN THEY BRING ANY CHARGES AT ALL AGAINST THIS COLLECTION OF HUMAN REFUSE.

WHAT IS THE FEELING AMONG MINNEAPOLIS POLICE ABOUT PRIVATE, HONEST CITIZENS HAVING, CARRYING, OR OWNING GUNS?

LET ME ANSWER THAT WITH ANOTHER SHORT STORY.

A FEW YEARS AGO AN OFFICER FROM HUTCHINSON WAS KILLED BY A PRETTY HARD-CORE CROOK. HE CAME INTO MINNEAPOLIS AND STOLE A CAR. DURING THE CHASE, MY DEPARTMENT WAS HOPING AGAINST HOPE THAT THE COP-KILLER WOULD BREAK DOWN IN THE COUNTRY, KICK IN SOME FARMERS DOOR, AND COME FACE TO FACE WITH A FARMER WHO WAS ARMED AND WILLING TO USE HIS OR HER FIREARMS TO PROTECT HIMSELF AND HIS FAMILY FROM THIS KILLER.

THAT IS HOW MUCH FAITH LAW ENFORCEMENT HAS IN OUR CRIMINAL JUSTICE SYSTEM.

DO WE SUPPORT BANS ON SO-CALLED SEMI-AUTOMATIC ASSAULT WEAPONS OR PISTOLS WITH HIGH CAPACITY MAGAZINES. NO WE DO NOT.

DO WE SUPPORT PRIVATE CITIZENS WHO OWN FIREARMS AND ARE WILLING TO

USE THEM? ABSOLUTELY.

ARMED HONEST CITIZENS POSE NO THREAT TO THEIR FAMILIES, NEIGHBORS, OR COMMUNITY. DISARMED CITIZENS ARE LITTLE MORE THAN PREY WAITING FOR A CRIMINAL PREDATOR.

ALL THE DEBATE OVER WHETHER OR NOT A CITIZEN WHO COMMITS NO CRIME SHOULD BE ALLOWED TO OWN A FIREARM FOR DEFENSE -- WHETHER THAT FIREARM IS AN ASSAULT-STYLE WEAPON OR A .22 CALIBER POP GUN -- PALES BY COMPARISON TO THE NEED FOR A RADICAL CHANGE IN OUR CRIMINAL JUSTICE SYSTEM. WE MUST MAKE THE PUNISHMENT FOR CRIME FAR MORE FEARED THAN THE BENEFITS OF THAT CRIME.

THANK YOU.

Mr. McCOLLUM. Thank you very much, Sergeant Hinz.

I can't help but comment, in looking at your testimony—and I was out of the room briefly for some of the oral, but you commented that, to your knowledge, there has not been one incident in the last 5 years where Minneapolis has used their 5-year minimum mandatory penalty for the use of a firearm in the commission of a crime; the gun is the first charge plea bargained away. And I think you make, maybe not intending to do so, a very eloquent statement in support of a provision we may put into law, or at least put into a bill we pass later this spring, dealing with minimum mandatory sentences here at the Federal level, where we think—at least I think—that if you commit a crime with a gun, wherever that's committed, we need to take that person and put them away for a long period of time, and that should be a major crime in and of itself, just using the gun in the crime itself, whatever it is.

And to think that in Minneapolis they're all being plea bargained away is, I think, a very strong statement saying that maybe we ought to have a Federal law where occasionally the U.S. attorney can step in and make that point, if local police, for some reason, are not able to get their way through your prosecutors.

Do you have a comment on that?

Sergeant HINZ. I would fully support anything in that area. The way our law is set up, that mandatory 5-year sentencing is supposed to be on top of the sentencing for the crime you've committed. It seems as though it's become more expedient to plea bargain that end of it away and try and cut an already-crowded court calendar than it is to make criminals pay for what they are doing.

Mr. McCOLLUM. Well, what we're trying to do is to set up a law that would say that, in addition to, separate and apart from, whatever the State law is, if you commit a crime with a gun, the Federal prosecutors, the U.S. attorney may in his discretion come in and prosecute you for the use of the firearm in the commission of that crime, and it just occurs to me that, based upon what you've said, if that's widespread throughout the United States, it's all the more reason to do that.

I've got a question related to some future testimony that's going to come up that I'm going to ask one or two of the witnesses here today. Maybe I'll pick on Officer Jennings for this one—just “eaney, meaney, miney, mo,” and I picked on you, I guess.

But one of the witnesses that's going to testify is a police officer from another community, and he says that he favors the assault weapons ban, and one of the reasons he favors it is because you can have guns on the streets that bad guys can have that can shoot 30 or 100 bullets without reloading, and that there's a strong change that innocent bystanders will be gunned down, and that while police officers are reloading, they are at the mercy of desperate criminals that could shoot 30 to 100 rounds without reloading. And he thinks that alone, those two reasons are sufficient to warrant banning these so-called assault weapons.

Do you have a response to that kind of thinking by a fellow police officer?

Officer JENNINGS. I think in responding to that, I can only say that less than 1 percent of the crimes are committed with high-capacity rapid-fire weapons, that it's not prevalent in my particular

community. I don't know where that individual is from or whether he is just anticipating something of that nature occurring. However, those are not the weapons of choice of the individuals in our community. They tend to the Saturday night specials, revolvers with five- or six-round capacity.

Mr. MCCOLLUM. Well, that brings me to another point in the same area. The Fraternal Order of Police is going to have a representative before us later today who makes the point that assault weapons are eight times more likely to be used in crime than legitimate sporting weapons. Officer Roberts, that somewhat seems contrary to something you said earlier. What do you think of that statement?

Officer ROBERTS. I would see where they got their statistics on that. I would like to see the reports. I don't know where they come up with that because I haven't talked to anyone that's seen it and I haven't seen it myself.

I would like to respond to the previous question a little bit—

Mr. MCCOLLUM. Sure.

Officer ROBERTS [continuing]. And add something, because, you know, we've read the crime bill that came out, the crime law, and it's very interesting the way this was worded. I guess if you're a Harvard lawyer, it might make sense, but to us in the field we look at this and it looks like it's disarming the police to us. It talks about the different things that you can possess or have or be transferred to you, but it doesn't talk about being able to acquire or buy or procure.

I went 2 weeks ago into a local police equipment shop to buy two additional magazines for my service issue Smith and Wesson .40 caliber semiautomatic pistol. I could not buy them because of this law, because they held 11 rounds instead of 10. And then when I did buy the 10-round magazines, the price, gentlemen, was \$45 apiece. Now on my salary that's a lot. That's what this law has done to me and my fellow officers.

When I retire, I've got the same situation. And our retired officers are subject to active recall at a moment's notice by the chief of police. That's State law. I can get recalled to active duty. I am limited to three magazines of the capacity that came with my weapon; three, that's all that was issued, and there's no system to procure these magazines through the department. They only issue three; that's what you get. You can't buy them through the department.

This wasn't taken into consideration when this was passed, and no one asked, including our esteemed representatives at the FOP, of which I am a member.

Mr. MCCOLLUM. Well, you made a good point.

I'm going to limit myself, because I want the 5-minute rule to apply here, and I didn't throw the clock, but I understand it's about 5 minutes.

This petition you had signed, I just want to make the point; you did not tell us what it was. It appears to say on its face—and we've introduced it into the record—that 155 officers endorse the repeal of the assault weapons and large-capacity ammunition ban that we passed. I just want to make that point for the record. That's what it says on its face.

Officer ROBERTS. Yes.

Mr. MCCOLLUM. And, with that, I will yield 5 minutes to the gentleman from New York, our ranking member.

Mr. SCHUMER. Thank you very much, Mr. Chairman. I appreciate the testimony of the officers here. I respect the job they do. I would submit that they are a small, small, small minority of police officers. We can probably find six officers, to say just about anything. But the largest police organizations are strongly for the assault weapons ban—the FOP will testify later. It has far more members than are represented in all the police departments here today. If everyone in your police department agreed with everyone here, the FOP would dwarf it probably by 10 times.

I'd like to submit for the record a statement from NAPO, the National Association of Police Officers. That is the second largest police organization.

[The prepared statement follows:]

PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF POLICE OFFICERS



NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC

Representing America's Finest

750 First Street, N.E. Suite 1020 • Washington, D.C. 20002-4241
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STATEMENT OF BOB SCULLY
ON GUN LAWS

April 5, 1995

Executive Director
 ROBERT J. SCULLY
 General Counsel
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 Legislative Counsel
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 Legal Counsel
 LINDA J. REESE

President
 THOMAS J. SCOTT
 President, Detective
 Endowment Association
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Executive Vice President
 TONY LOZZO
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Recording Secretary
 C. J. HOLT
 President, Central
 Coast Chapter, PORAC
 San Jose, CA

Treasurer
 ROBERT SHEEHAN
 President
 Florida PBA
 Tallahassee, FL

Sergeant-at-Arms
 MARTIN MCKEAN
 Executive Secretary
 Ohio PBA
 Berea, OH

Executive Secretary
 B. D. "BUD" STONE
 Past President, PORAC
 Berkeley, CA

On behalf of the National Association of Police Organizations (NAPO), representing over 180,000 sworn law enforcement officers from 3,500 police unions and associations throughout the country, I would like to make clear NAPO's strong and continued support for both the Brady Law and the assault weapons ban.

NAPO's membership consists of rank and file officers from local, county and state law enforcement organizations in twenty-two states across the country. NAPO's legislative resolutions are taken annually at our convention by hundreds of delegates from our different member associations and for the last several years the delegates have voted unanimously to support the Brady Bill and legislation banning assault weapons.

Individual NAPO members have worked long and hard to pass these public safety measures to protect law enforcement and the American public alike from the ravages of gun violence. Over the years, NAPO joined with the other major national law enforcement groups in a unanimous front to support these common sense gun laws.

Just last year our members lobbied to keep the Feinstein amendment as part of the Crime Bill and now we find ourselves defending the very legislation took so long to become law.

As working cops, our members walk the streets daily to protect and preserve the peace. And, it is the cops who know all too well what it is like to be outgunned. They also know the value of banning the military style assault weapons that the criminals they face favor. They know too the value of a cooling-off period and background check before the purchase of a handgun. The Brady Law and the assault weapons ban have nothing to do with the Second Amendment, but everything to do with public safety.

Last month, our Texas affiliate organization, Combined Law Enforcement Associations of Texas (CLEAT) commissioned a statewide poll on assault weapons which found that even in the Wild West, 64% of Texans oppose repeal of the assault weapons ban. I think we can safely draw the conclusion from the CLEAT poll that the American public opposes any repeal of the assault weapons ban.

I would like to ask the Congress to give these public safety laws a chance to work -- let's not overturn them now. The Brady Law is working and the assault weapons ban has only been law for six months. Both the Brady Law and the assault weapons ban already have ten year sunset provisions, so why would Congress rush to repeal them? Again, these measures deserve a chance to prove their effectiveness -- let's give it to them.

Mr. SCHUMER. I would like to submit the fact the following groups supported the crime bill and assault weapons ban last year, in addition to those two: the National Sheriffs' Association, the National District Attorneys' Association, Federal Law Enforcement Officers' Association, National Troopers Coalition, International Association of Chiefs of Police, Major City Chiefs, International Union of Police Associations, Police Foundation, National Association of Attorneys General, International Brotherhood of Police Officers, Police Executive Research Forum, National Organization of Black Law Enforcement Executives.

I would ask unanimous consent to submit statements from all of those groups in the record supporting the ban.

Mr. MCCOLLUM. Without objection.

[The information was not received by the time of printing.]

Mr. SCHIFF. Will the gentleman yield for one question on that?

Mr. SCHUMER. I'd be happy to yield on the gentleman's time. I only have 5 minutes. OK.

Mr. SCHIFF. All right, take 1 minute out of my time then and I'll ask the gentleman if he'll yield.

Mr. SCHUMER. I have no objection.

Mr. MCCOLLUM. Very well. Then go ahead, Mr. Schiff.

Mr. SCHIFF. I thank the gentleman.

Several of these gentlemen said that they've been contacted by officers on the street offering to sign petitions in support of their provision, and hundreds of officers have signed petitions just on a couple hours' notice, as represented here. Do any of the organizations that the gentleman has cited, do any of them have a petition drive among officers to show that their position is supported by the rank and file?

I yield to the gentleman.

Mr. SCHUMER. Yes, well, most of these organizations have conventions. They have popularly-elected leadership, and the conventions have all endorsed these positions.

Mr. SCHIFF. The gentleman didn't answer my question. Do any of these organizations have—

Mr. SCHUMER. They may or may not. I haven't asked them, but I am sure if we had a battle of petitions among the police officers of America or the citizens of America, we could get many more people for the assault weapons ban than against it.

Mr. SCHIFF. It might be interesting to see. I—

Mr. MCCOLLUM. The gentleman has an additional minute added onto your time—

Mr. SCHIFF. I appreciate it.

Mr. MCCOLLUM [continuing]. And I will add it on at the end of the green light here.

Mr. SCHUMER. OK. The second thing I would say is Lieutenant Tueller, is an active member of the Law Enforcement Assistance Association. I would also submit for the record the fact that that was started with seed money from the National Rifle Association, according to quotes not only in the Washington Post, which the lieutenant might find suspect, but from the NRA official journal of September 1990. And, without objection, I'd like to submit that for the record as well.

Mr. MCCOLLUM. Without objection.

[The information was not received by the time of printing.]

Mr. SCHUMER. OK. Because my point is that some of the gentlemen here are active in that organization, which I believe has simply been set up by the NRA, compared to overwhelming law enforcement support for rational laws of gun control. This organization's sole purpose is basically to fight gun control. They never came to me when I was head of the Crime Committee and lobbied for mandatory sentences, which I supported; the death penalty, which I supported, and other things. The only time we saw them was in the area of gun control.

And one other thing I'd say to my colleague from Georgia. I heard more denigrating of fellow police officers from that side of the panel, particularly Lieutenant Tueller and Officer Roberts, fellow police officers, than I heard anyone say on this side of the panel. And I think it's unfortunate that, to make arguments, some—not all, but some—of the gentlemen on that side of the panel had to denigrate their fellow officers.

And to that end, I'd simply ask Lieutenant Tueller—I have a lot of questions, but my time is very limited—what did he mean when he said “stormtroopers” would come and take away everyone's gun? Was he referring to some members of law enforcement? That was in your statement.

Lieutenant TUELLER. Well, as was mentioned, we are the law enforcement officers—

Mr. SCHUMER. Who are the stormtroopers, sir, that you were referring to? Was it ATF? Do you think they're stormtroopers?

Lieutenant TUELLER. No, sir.

Mr. SCHUMER. Who were the law enforcement—because they were law enforcement officials. You said they were stormtroopers who would come in and take away people's guns.

Lieutenant TUELLER. I don't believe I said any such thing, sir.

Mr. SCHUMER. OK, I would—

Lieutenant TUELLER. I said that—

Mr. SCHUMER. We will examine the record. I heard it.

Lieutenant TUELLER [continuing]. Senator Feinstein—excuse me—

Mr. SCHUMER. It's on the film of all those people. Please—

Lieutenant TUELLER. Would you like me to answer your question, sir?

Mr. SCHUMER. You just said you don't believe you said it. You did say it. Your credibility is in doubt now, sir.

Lieutenant TUELLER. Mr. Schumer.

Mr. SCHUMER. Yes, sir?

Lieutenant TUELLER. As a law enforcement officer—

Mr. SCHUMER. Right.

Lieutenant TUELLER [continuing]. You have accused me of denigrating my fellow law enforcement officers—

Mr. SCHUMER. You did.

Lieutenant TUELLER [continuing]. And that is also not true. I spoke of the leadership of some of these organizations. I spoke of—

Mr. SCHUMER. They're law enforcement officers.

Lieutenant TUELLER. As you are mentioning, you attempt to denigrate the Law Enforcement Alliance of America. You seem to imply that someone is putting words in our mouths.

Mr. SCHUMER. I didn't imply that.

Lieutenant TUELLER. Well, I—

Mr. SCHUMER. I said that it was founded by seed money from the NRA. Is not that true?

Lieutenant TUELLER. Well, sir, I became a member of an organization called the Law Enforcement for the Preservation of the Second Amendment because thousands of officers realize that our views were not being heard, and that organization developed into the Law Enforcement Alliance of America, which works closely with the National Rifle Association and many other—

Mr. SCHUMER. Thank you. Thank you.

Lieutenant TUELLER [continuing]. Organizations that support the same—

Mr. SCHUMER. Let me ask one final question. I agree it works closely with the National Rifle Association.

The only other question I had was again for you, Lieutenant, which is: What proposal—you talked five or six times about unilateral personal disarmament. What proposal are you referring to? Is there a bill? Is there a law? Is there some Member of Congress who is proposing that? I certainly don't support that. So could you please give me a specific proposal, or is this just something that you might fear, but has no concrete basis that anyone in the Congress, now or before, has opposed—proposed?

Lieutenant TUELLER. Well, sir, I have seen over the years numerous attempts at undermining the second amendment, second-guessing the—

Mr. SCHUMER. No, but I'm asking you, sir, specifically, to please answer my question. What proposal out there that you're afraid of—I'd be afraid of unilateral personal disarmament. I would. What proposal out there is making you afraid. Is there a specific proposal? You mentioned it numerous times in your statement.

Lieutenant TUELLER. Yes, sir.

Mr. SCHUMER. What is it?

Lieutenant TUELLER. Most of the guns—gun laws that come down the pike—

Mr. SCHUMER. No, just give me a specific one.

Lieutenant TUELLER. Certainly, sir.

Officer RODRIGUEZ. Mr. Chairman, I'd like to answer that.

Mr. SCHUMER. Please, go ahead, Officer.

Officer RODRIGUEZ. Well, I can't give you a specific proposal, Mr. Schumer, but I certainly can give you a specific incident.

Mr. SCHUMER. No, no, no. I don't want—I asked for a proposal, sir.

Officer RODRIGUEZ. Well—

Mr. SCHUMER. I asked for a proposal.

Officer RODRIGUEZ. I'm standing here with an empty holster—

Mr. SCHUMER. Yes.

Officer RODRIGUEZ [continuing]. Empty magazine carriers—

Mr. SCHUMER. Right.

Officer RODRIGUEZ [continuing]. And I'm not considered to be fit to carry my firearms that I'm charged with by the city of Albuquerque.

que, the residents of my State, and the residents of my city, because I'm here on the Hill and I'm subject to your actions as a Member of this body——

Mr. SCHUMER. I see.

Officer RODRIGUEZ [continuing]. And I'm not allowed to do any——

Mr. SCHUMER. OK, Officer. So your example——

Officer RODRIGUEZ. As an officer, I can't wait to see what you're going to——

Mr. SCHUMER. Should any citizen be allowed to walk in with a gun here?

Officer RODRIGUEZ. If a citizen is qualified and credentialed, you bet; I would think——

Mr. SCHUMER. OK.

Officer RODRIGUEZ [continuing]. As an recognized police officer in uniform——

Mr. SCHUMER. We have a difference in views of that. I don't consider that—and I don't think most Americans would consider that—unilateral——

Officer RODRIGUEZ. Well——

Mr. SCHUMER [continuing]. Personal disarmament. We've had shootings here.

Mr. MCCOLLUM. Mr. Schumer, your time is up, even the added time here.

Mr. SCHUMER. Right.

Mr. MCCOLLUM. Mr. Schiff.

Mr. SCHIFF. Thank you. Thank you very much, Mr. Chairman.

Since my time is now down from 5 to 4 minutes, I'm going to be very brief here.

First, Mr. Chairman, I appreciate your admonition, if you will, about the fact that we try to work with all organizations through this subcommittee. I've been a member of the Fraternal Order of Police for more than 20 years. I've been disappointed in some of their positions. I think some of their positions do not reflect what the membership actually believes, as I see fellow members, but I'm still very, very proud to be a member of that organization.

Second of all, I want to make the observation again that there's a tactic in the discussion of this legislation that's not unique to this legislation, and the tactic is: what does the National Rifle Association say about it, or perhaps on our side, what does Handgun Control say about it? I think that we are here to pass good legislation, to not pass bad legislation, and although the NRA and any other group is entitled to its opinion, I trust its opinion does not knee-jerk us in some kind of reverse mode for some reason.

I think the most important aspect of this hearing is this: we've been told over and over and over again that we need certain laws on the books with respect to firearms because the police support those laws, and we have been presented with the same police officers over and over again who reiterate that. I have no doubt that many police officers do support some of the firearms legislation that we have passed, and, indeed, might support more. I think what this panel indicates is that the police are not unified in that position, and I think, by the way, the battle of petitions might get

very interesting on some of these subjects, as to which the police on the street favor more or less.

I just think that we are being presented here with a real balance, a balance of the fact that the police are not in lock-step on legislative proposals any more than other organizations are, and there are different points of view. And I think this hearing has been a wonderful opportunity to present that point of view.

Gentlemen, I'm going to change subjects with my remaining time and ask you this question, ask you to respond, if you will: the most useful firearms law, gun control law, on the books today, without a doubt in my mind, is the rather old now Federal law against a convicted felon possessing a firearm because that targets gun control right to the person you don't want to hold a firearm, a convicted felon. I have been very disappointed in the enforcement of that act, which I think has been more often the lack of enforcement of that act by the U.S. Justice Department not only under this administration, but previous administrations.

For example, they have testified that the Justice Department—most enforcement of that act is after the fact; in other words, after there's a new crime, you add felon in possession of a firearm to the new armed robbery, or whatever it is. I've tried to get the Justice Department to adopt a minimum standard: "You will prosecute, U.S. attorneys, under this statute if you find a felon in possession, say, who's been released from a penitentiary within a year or so beforehand." The Justice Department testified that they believe that, until you have a new crime, you don't a felon in possession of a firearm. I think that's patent nonsense, based on my experience in street law enforcement.

I would be very grateful, in any order that you prefer, if you would respond. Do you ever, in the street, do you ever run into convicted felons in possession of a firearm before they've committed a new crime? Who'd like to start on that? Well, a little partisanship here, parochialism perhaps, Officer Rodriguez.

Officer RODRIGUEZ. Thank you very much, Congressman.

Congressman, working with the repeat offender project, we find them all the time. We'll stop a car for some other type of violation, and we'll find weapons that are not actually being used in the commission of a crime, but the person has a history of violence or he has a prior history of felony convictions, and we're not allowed—we'll take the weapon and we'll generally secure it, but nobody will prosecute it. So we've done is we can take the weapon without giving it back to him, but he serves no time.

Another thing that happens is that other States are exiling their people to our State. What they'll do is they'll say, OK, you're wanted in the tristate area or in the D.C. area, but we won't extradite you if you're more than a State away. So we have people we run on NCIC all the time that come up as a hit; they're wanted out of New York or some place else, and then on the bottom it will say, well, only extradite from adjoining States. That doesn't help us at all.

Mr. SCHIFF. One quick followup: are you saying that you have no trouble finding convicted felons in possession of firearms before a new offense is committed?

Officer RODRIGUEZ. All the time.

Mr. SCHIFF. And are they prosecuted?

Officer RODRIGUEZ. No, sir.

Mr. MCCOLLUM. Thank you, Mr. Schiff. Your 4 minutes stretched slightly, but we did come pretty close to it.

Mr. SCHIFF. Thank you for that stretch. Thank you.

Mr. MCCOLLUM. Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I'm sorry that I was not extended the same courtesies to make a remark or two, as my Republican colleague. So I will have to make sure that I make some opening comments, and I guess my time will be limited to 5 minutes.

Mr. MCCOLLUM. Ms. Jackson Lee, you'll certainly be allowed to make opening comments, if you want to add some to that, at the end of this panel. I only allowed Mr. Schiff to welcome Mr. Rodriguez. There's no difference in treatment of the members of the committee. The opening statements are normally reserved to the beginning of a panel, when we first start, and, certainly, I'd be willing as I passed through—I thought Mr. Schumer—to let you make a statement at the beginning—at the end of this panel before we introduce the next one. So you may use time to question and make an opening statement, if you wish.

Ms. JACKSON LEE. I appreciate it, Mr. Chairman. I do note that my colleague did make more than a welcome, but I do appreciate your comments on that.

Let me, first, acknowledge the fact that I do appreciate the wealth of diversity and opinion in this Nation and adhere to the first amendment, the right to freedom of speech, as much as I adhere to the second amendment. But if I might, as I have listened to the gentlemen, I'm almost reminded of Halloween, the ghoulish conversation and dialog that I have heard this morning in this hearing. And the reason I say that is because I have no disagreement with my colleague from New Mexico about the strong enforcement of felony possession. I have no disagreement with the 70-year-old senior citizen warding off a knife-wielding invader and intruder into her home. I have no disagreement with a 6-foot, 8-inch, ex-felon breaking into your home and being confronted by a law-abiding citizen protecting their property. And so all that I have heard this morning brings no disenchantment or disfavor.

The problem I have is that you are mixing more than apples and oranges. You are totally confusing the intent of these hearings, as I understand it. We're talking about banning assault weapons. As I read the second amendment, and it has not changed, it clearly indicates that the amendment pertains to "a well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed."

And so when we begin to analyze what we're doing here in the U.S. Congress, we certainly should do it in the context of the second amendment, and most of the Federal law cases have indicated that gun regulation—because I have abhorrence to gun control; I think it is reasonable gun regulation—is not against the Constitution. And so I am at loss—and, Officer Roberts, I truly appreciate your service in the Vietnam War and your service in the military. They were not drafting women when I came through. I might have been there and might have had the opportunity to serve as well as

you did. But I certainly applaud it, respect it, and appreciate it. But I don't think we can compare those two societies with this society.

First of all, Officer Rodriguez, I am absolutely appalled at the most ridiculous comparison to the fact that you cannot bring an armed weapon into a Government building, to suggest that that is comparable to banning assault weapons—absolutely ludicrous. Would you want free-flowing citizens to walk into your police station, whether or not they were law-abiding or not, with weapons? I think you need to talk to the District of Columbia Police Department with the recent tragedies that they have suffered. My heart goes out to them.

I've been supported by police organizations from my community, and I can assure you that all I want for them is the safest atmosphere that they can possibly get. I'm not worried about Congressman Sheila Jackson Lee in terms of weapons, but I would not want people walking these hallways when innocent citizens are likewise walking these hallways. So I think that it is fair that we have the kind of security we have in these buildings, and I would ask you, do you think that it's not fair to have airport security, that we would allow citizens to go on our airplanes and in our airports armed to the teeth, so that they would have the opportunity to do danger, if you will, to those innocent citizens who are traveling in the highways and byways and the airstreams of this particular Nation? I don't want an answer to the question at this time. [Laughter.]

I simply want to say to you that——

Officer RODRIGUEZ. I didn't think so. Thank you.

Ms. JACKSON LEE [continuing]. I believe that this discussion has taken a wild turn, and I, for one, from Texas can certainly applaud the wild West. It is our history. But we are not in the wild West now. With 100,000 individuals from ages 0 to 24 dying between 1993 and 2000 by gun violence, I would say to you that, as law enforcers, let's stick to the issues. Let's fight for felony possession enforcement. Let's fight for putting the criminals in jail. Let's fight for tougher laws on those who would violate our crimes, but let's get out of the Halloween ghoulish comparisons to suggest that we are trying to take guns out of the homes of innocent citizens who are protecting themselves. All we are doing is banning weapons of violence that have no need on the streets of this city, and I would argue any time with any one of you.

And I apologize for not being able to hear your answer, but I was fully overwhelmed by the ghoulish talk that was presented here today in contrast to the working men and women who wear the blue uniform who I realize that my responsibility is to protect them and protect the law-abiding citizens of this Nation.

Thank you very much.

Mr. MCCOLLUM. Mr. Heineman. Mr. Heineman, you may be recognized for 5 minutes.

Mr. HEINEMAN. I'd like to reserve my time, Mr. Chairman.

Mr. MCCOLLUM. Then, in that case, Mr. Bryant.

Mr. BRYANT of Tennessee. Thank you, Mr. Chairman.

I have just a few questions in followup to your testimony. And I want to thank you. I think this panel is a representation of our

good law enforcement people throughout this country. They're not limited to just the big cities. They're out in America's heartland. These are not the big city police chiefs. These are the folks that, as I mentioned in my opening statement, that are on the front line that literally are putting their lives on the line each day they go to work, and I certainly, for one on this side, appreciate their very frank and open remarks, their stories that they tell.

I think this whole issue of dealing with violent criminals is a ghoulish one, and I think it's time that we begin to hear both sides of this story, that the American people begin to hear both sides of this story and understand that it is, in fact, when you're dealing with a violent criminal, whether they're on the street, as you gentlemen do, or whether they might be in one of our houses late at night, that we have the right to self-defense, and it's certainly one of the reasons I understand that we're having these hearings, is to talk about self-defense. And, certainly, I think you gentlemen have done that very well.

Let me follow up with just a couple of questions. Bryant, from my district, I'm very familiar with you and the outstanding police department that we have in Memphis. However, as good as you are, when you dial 911 or you get on the telephone or you call for help, is it reasonable to expect that the police can be everywhere and come to your assistance in time to prevent a crime, with the assets that you have in Memphis?

Officer JENNINGS. No, sir. Through the annexation process, we've increased our geographical size, but not increased our complement of police officers to the extent that we would like, but, obviously, to the extent that the tax base would support it. Therefore, a time-distance situation exists. You can only travel so fast at such a speed to get to a certain point, and sometimes our response times are in excess of 15 minutes.

Mr. BRYANT of Tennessee. Do—maybe to clear up a misunderstanding I think I had, and perhaps some of the others viewing this have it also—in most instances, are law enforcement officers required to buy their own firearms and ammunition, equipment, and so forth?

Officer JENNINGS. In Memphis, TN, they are supplied by the city. There's a uniform weapon that we carry; other departments do other things. However, any additional magazines that an officer would wish to carry for his weapon, he must purchase by himself.

Mr. BRYANT of Tennessee. I know there are other cities, smaller cities, in my seventh district of Tennessee that do have to do that. They have to purchase their own guns. And I see some of you folks nodding your heads. So that these things are not always furnished to law enforcement. It's up to the individual officer, out of his own pocket, his or her own pocket, to purchase these?

Officer JENNINGS. Yes, sir.

Mr. BRYANT of Tennessee. So the cost, the rising cost, as I understand, that the semiautomatic weapon ban has caused is actually affecting officers in some locations in terms of what they can purchase—

Officer JENNINGS. Yes, sir.

Mr. BRYANT of Tennessee [continuing]. Costwise and what's even on the market available to them?

Lieutenant Tueller, I wanted to follow up. In regard to Mr. Schumer's question about anyone or any proposal regarding bans of weapons, I recall you mentioned something about Senator Feinstein and a statement that she had made that may have had some indication——

Lieutenant TUELLER. Yes, sir, I did.

Mr. BRYANT of Tennessee. What was that?

Lieutenant TUELLER. Well, I can refer back to my notes. She had made comments on the "60 Minutes" program that she would like to go into the homes of Americans and remove all the firearms. My reference to stormtroopers is just that. That is what it would take. It would take that kind of police state mentality and circumstance.

We can pass laws that may or may not facilitate what police officers do. I think we should be very careful about passing laws with the idea in mind that it will help the police. There are a lot of things that would help the police. Compulsory testimony would help the police. Search-and-seizure laws that—the restrictions that we have, we could ban those, eliminate the fourth amendment. That would make the job of the police easier.

The threat I see is that those kinds of governments have existed historically and do exist in this world today, and when we write laws with the idea in mind that they're supposed to help the police, we end up with, ultimately, a police state, where the police control everything. I don't see that happening in this country. I certainly don't want to be any part of that. I'm very proud of the law enforcement traditions in this country.

I think many of the statements I made have been misrepresented. I have a great deal of respect for the officers and members and deputies of many of the organizations that I mentioned. Many of my—I belong to a couple of those organizations, or have in the past, and I know and work with many other people who do. I am offended, sir, by the fact that they have misused and manipulated for political purposes.

Mr. BRYANT. OK, let me thank you. I see my time is up. I have a number of other questions, but my time's up.

Mr. MCCOLLUM. Thank you very much.

Mr. Barr, do you have questions?

Mr. BARR. Thank you, Mr. Chairman. I do.

And, Mr. Chairman, could I ask unanimous consent—our colleague that the chairman was kind enough to allow to sit in this morning had to leave, the gentleman from Maryland. He will be back. And he would like me—and I told him I would have no problem seeking unanimous consent that a paper be included in the record, and also ask unanimous consent that he be allowed to provide further written comment and questions.

Mr. MCCOLLUM. Without objection.

Mr. BARR. OK, thank you, Mr. Chairman.

[The information was not received by the time of printing.]

Mr. BARR. I'd like to tell the panel once again, as I said in my opening remarks, how much I appreciate them taking time from their extremely busy and all-important work of protecting the citizens within their jurisdiction to be here today, and I do have a couple of general questions.

But I'd like to ask Sergeant Hinz, if I could, on page—the second page, sir, of your paper, I quote: “In fact, to the best of my knowledge, there has not been one incident in the last 5 years where Minneapolis has used their 5-year minimum mandatory penalty for use of a firearm in the commission of a crime. The gun is the first charge plea bargained away.”

In light of what appears to be, Sergeant, a hesitancy on the part of some local prosecutors to use the minimum mandatory penalties for the use of firearms in the commission of a crime, in your opinion, would it be worthwhile to have Federal statutes more readily available and stronger in that area to be used?

Sergeant HINZ. It would, provided the Federal statutes are enforced.

Mr. BARR. OK.

Sergeant HINZ. The problem of court overcrowding is all the way through the system, I'm sure, and many times it's more expedient to plea bargain than it is to actually try someone.

Mr. BARR. OK. I don't want to put words in your mouth, but would it be a fair statement, in summary of what you said and in summary of some of your testimony, that we can have all the laws on the books that we want, but if they're not enforced properly, they're not going to do any good?

Sergeant HINZ. Absolutely.

Mr. BARR. OK. Thank you.

I'd also like to state that I, after my colleague from New York made reference, Lieutenant Tueller, to your remarks, I went back through them and I read the context in which I believe the gentleman from New York was referring to the use of certain terms, and I agree with you that I do not read in that that you were calling any Government law enforcement officials “stormtroopers.”

Lieutenant TUELLER. Thank you. I certainly—

Mr. BARR. And I'd certainly presume that that was not your intent.

What I'd like to do, if I could, ask all the panelists to very briefly tell me, among all of the different ways that those of us in law enforcement, those of you in law enforcement see the problems with crime in our community and the ways in which they can be most effectively addressed, everything from fundamental changes to our judicial system and our sentencing system, minimum mandatory sentences, citizen education, citizen awareness, on down the line to including the gun control that some folks up here would like to see, what, in your opinion, each one of you, if you could very briefly state, are the most effective and least effective ways of solving the problem of crime in America, particularly violent crime?

Lieutenant TUELLER. Thank you.

Several things come to mind. Mr. Barr, I, as a parent, father of six children, I—and seeing the things that I see on the street—I am constantly concerned about what kind of world my children will be inheriting, and their children. I guess one of the most effective things we can do is improve and increase the overall level of morality, civility that's felt. I don't believe that we will ever be able to build enough prisons as long as we have inadequate home and family environments, and that's one place that I would like to see us start.

Chief WILSON. I echo what he said in regards to the morality of the family environment and making sure that the family itself stays together. Also, unless we address the problem in our court system in regards to mandatory sentencing, to making sure that sometime these individuals are serving time—I make reference in the last 2 months my officers have arrested three individuals who have been charged with first degree murder. The longest sentence served by one of the individuals was 7 years. Unless we can aggressively attack the criminal through the court system, make them afraid of the system, we're not going to be successful in that area.

Officer ROBERTS. I want to bring up one thing in answer to that that I don't think has been addressed anywhere. What we're seeing in this country right now, gentlemen, is a lot of fear—fear in the behalf of the citizens of this country, and that's why they fear even more when we start taking their means of self-defense away from them.

What we need is less laws, enforce the laws we've got, keep the bad guys locked up for their sentence. Don't put them in a country club. And put some strings on the Federal judges and tell them to read the 10th amendment and go by it, and let us put people in jail and keep them there instead of turning them out just because they're uncomfortable. That's where we need your help in the Federal level. On a State level, let us do our State jobs. On the city level, let us do our city jobs. And we'll get out and we'll take care of it. We always have and we always will.

Officer JENNINGS. On the aspect of the most effective, I think what we have to do is develop a system of education in this country and start at the youth level and develop self-respect. If these individuals don't have self-respect, there is no way in this world that they will have respect for any other human being or the rights of any other human being.

In terms of punishment, we need a determinant sentencing process and we need a system that is a guideline, that if you commit a crime, you will be punished. We have a correctional system; the correctional system has failed. We need to go back to a punitive penal system, one that is something that is undesirable to participate in.

In terms of the least effective, that would be gun control. Our focus is correct here today. Our focus is on the criminal, not on the inanimate object. An inanimate object hurts no one; it is that human being behind or who utilizes that tool in an improper and unjust and illegal method.

Thank you.

Officer RODRIGUEZ. I agree with my counterparts up here. And the other thing I'd like to see is community-based policing taken farther and not just—I disagree firmly in the community-based policing is a concept of a police officer on every corner. I think that's wrong. I think what we need to do is get the community more involved, where they come out and ride with the police officers, see what's actually going on in the streets firsthand. That type of community-based policing I wholeheartedly agree with, and I'd like to see citizens become more involved in their local communities.

Sergeant HINZ. I'll agree with what's previously been said. Also, I think a lot of times you look at the previous crime package and

you've got social programs and you've got prison programs, and I would liken it to perhaps a computer system where, you know, the police and the court systems and the prisons are part of your hardware; your social programs and educational, things that are going to help develop a better self-worth in a lot of people in our society would be a type of a software package, and this is always changing and flowing, but you need to look at the two separately. While they fit together, I think it would be easier to fund programs, to look at funding for things, if you said, all right, we'll look at this part and we'll fund this, and this is the nuts and bolts; this is the hardware; this is what we just have to have in order to function. Now we'll look at the software and what we can do to help change and alter our society to get back to good family values, to get back to a much better self-worth in our young people in this country.

Mr. MCCOLLUM. Thank you.

Mr. Barr, your time has expired. In fact, you've already figured out as a freshman—and I compliment you on this—how to ask a question that allows your 5 minutes to be turned into 10 legally, legitimately. [Laughter.]

Mr. BARR. Mr. Chairman, that would never enter my mind. [Laughter.]

Mr. MCCOLLUM. I know.

We have the distinguished ranking minority member of the full committee here today, and I certainly, though he's not a member of this subcommittee, want to acknowledge him and give him an opportunity to make some comments for 5 minutes or to ask questions, if you wish, Mr. Conyers.

Mr. CONYERS. Thank you very much, Mr. McCollum, chairman of this committee. I appreciate your generosity.

And I'm here because this is such an important issue. I have a statement I'd like to have included. It would have been an opening statement, had I been here to hear you.

Mr. MCCOLLUM. Without objection.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF HON. JOHN CONYERS, JR., A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF MICHIGAN

What these hearings make clear is that the National Rifle Association and their supporters in the Republican Party are pushing ahead full steam to reverse the ban on assault weapons that Congress passed, and the American people overwhelmingly supported, last year.

This effort is nothing more than a political payoff for aid during the last election because President Clinton has repeatedly made clear that he will veto any effort to repeal the ban.

Let us not forget that assault weapons are lethal killing machines designed to tear the life out of another human being as quickly and efficiently as possible. It is the weapon of choice of street gangs, drug traffickers and other criminal elements because they intimidate as well as ruthlessly kill other people.

The debate is not about target shooting or hunting but about taking reasonable steps to protect the safety of our children and the next generation of Americans.

Those who would argue that gun control laws should be opposed because they have been used in the past to suppress African-Americans, or who say that guns helped prevent lynchings, ignore the very real progress made by the civil rights movement which make it unnecessary to rely on guns to protect our rights or our safety.

In urban areas today, the solution to the threat from out-of-control gangs and drug dealers is to disarm them, not give citizens the right to bear arms, which would only lead to more violence and deaths.

Constitutional sophistry should not obscure the message that assault weapons used to kill or maim people, and that are 20 times more likely than other guns to be used in committing a crime, will not be tolerated.

Mr. CONYERS. Yesterday's Detroit News, "Three Teens Shot at Detroit Schools," and it continues apace. As weapons now proliferate in our community at the local level, just to share the Detroit situation with you, my city ranks fourth in the Nation in the number of gun licenses. Ninety percent of the licensed dealers, though, operate out of their homes or make quick sales in parking lots. The Alcohol, Tobacco and Firearms investigation found that one dealer used false identification to obtain three licenses, bought 400 guns from wholesalers, and sold the guns on the street without keeping any sales records. Another one sold, we found out after the fact, 725 guns illegally, including weapons that were connected with a homicide, a near-fatal shooting of a 12-year-old, and also used in several narcotics cases. A dozen federally-licensed dealers in Detroit have been charged with providing 2,000 firearms to criminals in the city, according to a study by the Violence Policy Center.

Now the Bureau of Alcohol, Tobacco and Firearms has only 15 inspectors covering the entire State of Michigan, hardly enough to inspect the 13,000 federally-licensed gun dealers. And one annual inspection of all the dealers would take 20 years, according to BATF estimates.

So, with the Nation with 220 million guns at least out there and 2 million more being added every year, and many of these having greater firepower and more automatic, I consider ourselves in a very serious dilemma. And what we're doing here is unfolding a continuing debate that is becoming more and more critical because, as we go along, the weapons deaths are increasing, and so I say to you, gentlemen, notwithstanding all of your experience, you may be moving in the wrong direction.

Now at the national level, we've got a second amendment that is clear on its face that it's sometimes surprising to me that we end up talking about the right to bear arms. Let me—let me assure you that the Federal courts have been absolutely consistent in their view about the fact that the second amendment applies only to the Federal Government; it does not apply at all to the States, and that the right to bear arms is not an individual one. The amendment guarantees the right of organized State militias to be armed.

And so what I'm saying to you, as one who is trying to bring peace and order and tranquillity to my city and to our society, we've got to get on top of the gun problem. And for law enforcement officers to be describing why there should be more guns introduced into society seems to contradict all of the information, experience, and intelligence that I've gathered in this subject over some 20 or 30 years.

I'm hopeful that, as the debate goes on and as the experience continues to build up, most people in America will realize we don't only have to continue the assault weapons ban, but we've also got to continue—we've got to begin to reduce the number of other weapons that are available. And I hope you'll continue to join me in this dialog, and I appreciate your being here today.

Mr. McCOLLUM. Thank you very much, Mr. Conyers.

I believe Mr. Heineman passed earlier. Would you like to take a round? You have 5 minutes, if you do.

Mr. HEINEMAN. Yes, sir. Thank you, Mr. Chairman.

To Lieutenant Tueller, I have to compliment on your testimony here today. I'm only in this Congress a little over three months, and your testimony was about the most credible testimony that I've heard from any panel coming before this committee or any committee I serve on. And I know I differ on that from my colleague across the aisle in that regard. I think your credibility was as good as any I've heard and better than most—

Lieutenant TUELLER. Thank you, sir.

Mr. HEINEMAN [continuing]. Because I know the business. And listening to you talk, speak here, it was almost like a *déjà vu*. It was almost like looking into the mirror at me talking to myself. Now I may be criticized for not being credible as well, but I'm not sitting where you are, and I was extremely impressed by what you had to say and I was extremely impressed by what Officer Roberts not so much had to say, but the way he said it, the emotion, the great frustration that law enforcement feels now and has felt for years and years and years. In fact, that frustration drove me to run for Congress, and I'm not recommending that to you, Officer Roberts, but—and not to put down the rest of the panel, but I was extremely impressed by both the emotion and the frustrating emanating from you and the text of what you had to say. And I think your credibility—as I indicated, I differ from my colleague, Mr. Schumer—was about as good as I've heard.

Now, Sergeant Hinz, about—if you know—what percentage of the Minneapolis Police Department is sympathetic to your views here today, if you know?

Sergeant HINZ. I don't know for sure. I would estimate in excess—

Mr. HEINEMAN. Excellent answer. Excellent answer. Don't estimate. Just tell me that.

And I have to say that there are—from the police perspective, there is a paradox as to what you hear from the top levels in police administration and what you hear from the rank and file. I just received a—I received a survey from the Southern States BPA. Now I didn't ask for that. They came up here to talk to me about the crime bill, and I guess we'll get to that at some point in the future.

But there is a difference. I know I was—I was the chief of police in one of those departments, and this was taken the PBA in several departments, one of which was mine. Our opinions differed. Top level reflects what the management of the city, the administration of the city is all about. I have to represent my district as a Congressman. The police chief represents not only his city as far as law enforcement is concerned, not only the moral authority, but the legal authority of what that city is all about and what the administration of the city is all about, mayor on down. I don't criticize them for their views; they do it well. And I know that—and I did that for 15 years, and I think I did it well. I was there 15 years. But I know if you don't do that, you're not there 15 years. And I knew that there were police officers in my department that differed from my views, my public views.

So we will see a paradox here as far as it relates to the debate going on. And that third panel that's going to come and testify before us is going to speak, as you did, sincerely from what you be-

lieve in, and it's going to leave us just about where we were when this started. So the debate will go on.

As far as the Eastern part of this country is concerned and the Western part, you'll find a differential there as far as gun ownership is concerned, especially when you look at the large cities. Large cities don't favor guns. Large cities favor gun control, and that's what you'll hear from major city chiefs as well, and they do it well. They have a tough job.

But just thank you for being here. I'm impressed with the sincerity and what you had to say, not that any of it surprised me. You surprised me, Lieutenant, with your testimony, the text of what you had to say. You should be a captain soon, I hope, not based on your feelings on gun—the gun lobby or gun control, certainly not gun control, but I think you did an excellent job.

Lieutenant TUELLER. Thank you for saying so, sir.

Mr. MCCOLLUM. Thank you, Mr. Heineman. Your time has expired.

I'm going to be very lenient today because we have not held that many hearings as a subcommittee, and maybe the ground rules aren't real clear for everybody, and I want to be fair about it all. So I'm going to let Ms. Jackson Lee ask some questions now, but, normally—we can talk about it later, but, normally, the statements have to be made at the beginning, and I did not intend for Mr. Schiff to make a statement when he came in. I didn't think I was doing that.

But you've used your time to make a statement, which is perfectly "legit." Several people here did that. I understand you do have a couple of questions you'd like to ask, and I will yield to you to do that.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

I had posed questions to several of the members of the panel, but first I'd like to ask Chief Wilson if he would tell me how many—what's the population of his city?

Chief WILSON. Eleven thousand five hundred.

Ms. JACKSON LEE. And the specific law, because it did get a lot of attention, I guess, in the eighties or so, what is the particular law that you referred to? It allows what?

Chief WILSON. Basic law, which was March 1982, was adopted by the mayor and city council in regards to every head of household would own and maintain a firearm. That is in conjunction back to the Morton Grove, IL, law, where they forbid their specter from doing that.

Ms. JACKSON LEE. And they would have that particular firearm in their place of residence?

Chief WILSON. Home, yes, ma'am.

Ms. JACKSON LEE. OK. And would that also—would that law cover the particular homeowner transportation of that firearm?

Chief WILSON. No, ma'am, it just says home, period.

Ms. JACKSON LEE. OK.

Chief WILSON. It doesn't say that he can carry it out or anything. It's just at home.

Ms. JACKSON LEE. All right. I appreciate that.

To your knowledge, is there any present legislation that may have come to your attention that would impact that particular, I

guess it's ordinance or State law, county law, that is now before the U.S. Congress?

Chief WILSON. No, ma'am——

Ms. JACKSON LEE. Yes.

Chief WILSON [continuing]. I do not know of any.

Ms. JACKSON LEE. And I thank you for that.

Let me ask—I think Officer Rodriguez was prepared to maybe respond to it——

Mr. SCHUMER. Would the gentlelady yield just for a question?

Ms. JACKSON LEE. I certainly will yield.

Mr. SCHUMER. I would just ask Chief Wilson, does he believe that such a law that may well work in Kennesaw would work in New York City or Los Angeles or Chicago—just an opinion?

Chief WILSON. In my opinion, yes, sir.

Mr. SCHUMER. Thank you.

Ms. JACKSON LEE. Thank you, Mr. Schumer.

Officer Rodriguez, I—the question that I was trying to raise with several of the panel members, which I will allow some others to answer, in your particular police station or police headquarters, can anyone walk into the headquarters armed?

Officer RODRIGUEZ. Yes, ma'am, they can. In my State, as long as they are not a convicted felon, they can legally possess it; they're entitled to walk into the police station. Now we do have a metal detector. They are required to sign in, and they might be questioned as to what their purpose is, but, yes, they would be allowed.

Ms. JACKSON LEE. So there is, in fact, some form of regulation, meaning that there is a detector; there is some sort of sign-in process. And so whoever is at the entrance is aware of who is in the building that is armed, in addition to the police officers, of course?

Officer RODRIGUEZ. Well, they're aware of everyone who's in the building because all nonduty personnel are required to sign in.

Ms. JACKSON LEE. Right, and they go through a detector, which would indicate whether they are either armed or not armed?

Officer RODRIGUEZ. Whether they have metal or not, and then they would investigate them further, yes, ma'am.

Ms. JACKSON LEE. Correct. OK.

Do you have some aversion to the concept of airport security that does not allow weapons, knives, and other such weapons from being carried through the process of security, as well as onto the airplane?

Officer RODRIGUEZ. From an historical standpoint, I think there were a number of years when it didn't occur, that there were no problems, and then there was a trend where there were problems, and so administrative actions were taken. As far as whether or not I have a problem, I guess that would be a case-by-case basis. I see people get on the aircraft all the time that are fully armed, and generally they're Federal officers. So I think there are regulations that make it so, but there's lot of people that carry guns on planes.

Ms. JACKSON LEE. You don't think that is a reasonable response to protecting the citizens that travel on our public transportation and national airways of sort, to be protected in that manner?

Officer RODRIGUEZ. I suppose what I don't think is reasonable, madam, is the criteria for judging people, whether or not they may or may not. I find that if someone is in a protected class, such as

myself, I can carry a weapon onboard a plane, if I have a letter from my chief of police. A Federal officer, by showing his badge, can carry a weapon by showing his credentials.

So what makes my life, my training, more precious than a private citizen? Now whether or not we both need to travel is something that we could look at, but generally the way I see it is a protected class type of scenario.

Ms. JACKSON LEE. Well, I do appreciate the fact that you can carry a weapon with certain criteria, which is a reasonable man's theory, as they say, reasonably made a determination that you could carry it with a letter, but I think it also notes that you would probably accept the premise that you probably have more training than any other—the average, let me say, citizen who would be carrying one. And I appreciate your comment.

Let me ask Lieutenant Tueller just a brief comment about his activities with preventative measures. Are you in the DARE Program or the Safe Drug and Free Drug Program, or what kind of efforts do you do to prevent crime?

Lieutenant TUELLER. Our department is active in all of those areas, taking a very strong community policing stand and working through all those many efforts, and while I am not—as a lieutenant I supervise some officers who are involved in those; I am not personally involved in some of those programs, but I certainly am aware of them and support their goals.

Ms. JACKSON LEE. So not personally, but you do think that is a key element of crime prevention?

Lieutenant TUELLER. Absolutely. Training, education, knowledge is extremely, extremely important to solving virtually any human problem.

Ms. JACKSON LEE. Thank you very much.

Mr. MCCOLLUM. Thank you, Ms. Jackson Lee.

Mr. Chabot has just returned. We are about to wrap this panel up. Do you have any questions you would like to inquire?

Mr. CHABOT. No questions, Mr. Chairman. I will review all their testimony very closely, and we appreciate them coming here this morning. We have a markup in the International Relations Committee.

Mr. MCCOLLUM. Right. Well, we're about to dismiss the panel. Mr. Roberts raised his hand for some reason. I don't want a long soliloquy here, but I'll ask, inquire—

Officer ROBERTS. I just want to get some clarification on something because we came to bring information; we're also going home with information, and it concerns Ms. Lee and Mr. Schumer on a statement they made, if I could get some clarification on that, which it doesn't look like we'll be able to.

I heard Mr. Schumer say something about unilateral disarmament, and I kind of got the feeling, as my fellow officers did, that police officers aren't trusted to come to the capital of our country and carry a firearm, and that he doesn't want us to be trusted to do this, and that's kind of different from—he's telling us how he supports us, and then I heard the words, when my colleague from Albuquerque was speaking, from Representative Lee—she talked "wild West" and "ghoulish," and the point, I think, that he was trying to make was that we are sitting here now with empty holsters,

and I have no problem not carrying a firearm into a courtroom or a Federal building, but walking on the streets of the District of Columbia at nighttime I can't even carry a shoulder holster because of the law. I would be a criminal, even though I am a police officer. Yet, Washington officers can come to Oklahoma and we let them carry their weapons. You know, this is—Mr. Schumer kind of made the point that he doesn't trust us as police officers to have that discretion, even though our training and experience allow otherwise.

Mr. McCOLLUM. Well, thank you for the comment, I assume shared by most of you. I don't have—we don't have time today for a second round with the size panel you've got and the fact that we have two more panels. Many times we will go back and let members ask additional questions. You've come a long way, and we've spent a lot of time with you already this morning, and I really want to thank each of you for doing that. You've performed a service by doing it, and we want to thank you again for coming. But that's all we have time for today, and we'll have to go on to our second panel. You're dismissed, I guess is the way you'd say in the police department.

I'd like to at this time announce that we are going to proceed with the second and third panels, and to the degree we can rotate out as members to get lunch, or whatever, I would certainly like to continue the straightforwardness with this, since we do have three panels and they're very important today, and we don't want to keep them, some of them perhaps already longer than they expected.

So I'd like to welcome our second panel of distinguished witnesses at this time. I'll introduce you at this point and ask that, as this panel leaves, if you could come forward and have seats, we'll have the nameplates changed.

Our first witness is Dr. Robert Cottrol, professor of law at Rutgers University in Camden, NJ.

If we could have order as you're going out here—I don't want to overlook anybody's being introduced.

Our first witness is Dr. Robert Cottrol, professor of law at Rutgers University in Camden, NJ. Before acquiring his position at Rutgers, he was an associate professor at Boston College of Law—College Law School, from 1984 to 1990. A leading scholar in American legal history, Dr. Cottrol has written several books on gun control issues and is listed in "Who's Who" among Black Americans and "Who's Who in American Law."

Our next witness is Dr. Joyce Lee Malcolm, professor of history and chair of the history department at Bentley College in Massachusetts. Dr. Malcolm is the founder and director of the New England Heritage Center at Bentley and the author of numerous articles on the history of the second amendment and the right to keep and bear arms. She is also an elected fellow with the British Royal Historical Society.

Our third witness is Dr. Daniel Polsby. He is the Kirkland and Ellis Professor of Law at Northwestern University and a research fellow with the Independent Institute of Oakland, CA. Dr. Polsby is author of the new Independent Institute report, "Crime and Firearms." He's also written numerous articles and reviews which have appeared in Atlantic Monthly, Journal of Legal Studies, the Su-

preme Court Law Review, and the American Bar Foundation Research Journal.

Our fourth witness is Dennis Henigan, general counsel of Handgun Control, Inc. Mr. Henigan also serves as director of the Legal Action Project at the Center to Prevent Handgun Violence. The project is a national public interest law program which defends gun laws against legal attack and assists in legal representation of gun violence victims. Mr. Henigan has also written extensively on constitutional law and liability issues related to firearms.

I want to welcome all of you for coming today. I'm going to ask that you could, again, submit your full testimony. It's going to be put in the record without abbreviation to it, but to the degree that you can summarize that for us, it would be helpful. I'm sure your having sat through the first panel, you know when witnesses do give their full statements, that we don't like to say you can't do that; it does protract the hearing and we would like to have a chance to ask as many questions as possible. But this is a very important area—to my knowledge, the first time we've had a hearing from constitutional scholars on the second amendment rights to bear arms. And so I, again, do not wish to cut you off in any way by making these comments, but to the degree you can summarize, we appreciate it.

I'm going to start with Dr. Cottrol and work down the list. Please proceed. You're welcome to make your statement, Dr. Cottrol.

STATEMENT OF ROBERT COTTRIL, PROFESSOR OF LAW, RUTGERS SCHOOL OF LAW, CAMDEN, NJ, ACCOMPANIED BY NICHOLAS J. JOHNSON, ASSOCIATE PROFESSOR OF LAW, FORDHAM UNIVERSITY SCHOOL OF LAW, NEW YORK, NY

Mr. COTTRIL. Thank you, Mr. Chairman.

Mr. MCCOLLUM. The light needs to be turned on, the switch right there. There you go. Thank you.

Mr. COTTRIL. Thank you, Mr. Chairman.

Would the record also reflect that my statement was coauthored by Raymond T. Diamond of Tulane Law School, who is not present, and Prof. Nicholas Johnson of the Fordham Law School, who is present?

Mr. MCCOLLUM. The record will so reflect.

Mr. COTTRIL. Thank you.

Mr. Chairman, members of the committee, we are grateful for this opportunity to address the subcommittee on a matter of critical concern to the Nation. Our testimony is uncompensated and we are not representing any group. We are a diverse group of scholars with views that range across the contemporary American political spectrum. We come here as students of law and public policy, concerned that a constitutional principle older than the Republic itself is being eroded and, perhaps worse yet, trivialized by a deadly combination of reasonable and unreasonable fears, misinformation, cultural bigotry, and intellectual neglect. We are concerned not only with the evisceration of this right, but also that what is now happening with one right may spread and, ultimately, truncate all of the rights that have been part of the unique heritage of our Nation.

We speak, of course, of the right to keep and bear arms, a right that the framers of both the 2d and the 14th amendments intended

to protect. It is a right that is often little understood. Some have argued for a trivial view of the right, stating that it protects the right to have firearms for sporting purposes, target shooting, recreational hunting, and similar pursuits. But as worthy as such activities are and despite the fact that they are enjoyed by tens of millions of decent law-abiding citizens throughout the Nation, to assume that a fundamental right was recognized by the Constitution simply to protect a hobby is to trivialize both the Constitution and the very serious legal and political thought that went into the drafting of that document.

Others have seized upon the militia clause of the second amendment to argue that the amendment does not, despite its language, protect the right of the people at all. Instead, they claim it was simply designed to protect the right of States to maintain militias. This is argued by all too many in public life despite the fact that it runs counter to overwhelming textual and historical evidence.

We would contend, instead that the right to arms is something critical to say concerning the relationship between the citizen and the State. For most of human history in most of the nations of the world, the individual has all too often been a helpless dependent of the State, dependent on the State's benevolence and, indeed, competence for his physical survival. The notion of a right to arms says something very different. It says that the individual is not simply a helpless bystander in the difficult endangering task of ensuring his or her own physical safety. Instead, the citizen is an active participant, an equal partner with the State, in ensuring not only her own safety, but that of her community as well.

This is an important concept. It takes the individual from servile dependency on the State for survival to the status of participating citizen capable of making intelligent choices in defense of one's life and, ultimately, one's freedom. It is a concept that recognizes that the ultimate civil right is the right to defend one's own life; that without that right, all other rights are meaningless, and that without the means of self-defense, that the right to self-defense is but an empty promise.

Ultimately, the right to arms is about something more. It is a recognition of the dangers that are posed by giving the State a monopoly of force. We speak too little of this danger in modern-day America. That is understandable. We are fortunate to live in a democratic and liberal Nation, blessed with an essentially humane Government. The idea of governmental tyranny and the need to resist it seems remote. But history should give us pause.

Who at the beginning of this century could have envisioned a homicidal maniac like Hitler ruling Germany, a nation renowned for its contributions to science, culture, and scholarship? Could the horrors of the Nazis Holocaust have been lessened had there existed a more robust tradition of private firearms ownership in occupied Europe? Might resistance have been more effective? What if the heroic struggles of the people of the Warsaw ghetto had been magnified a thousandfold in hundreds of cities, towns, and villages across Nazis-occupied Europe, aided by a more common tradition of arms ownership? Might that have helped alleviate one of the darkest blots on human history? It is a question that we should ask over and over again with respect to this bloody century, where we

have seen the devastating consequences of unchecked State monopolies of force and helpless civilian populations in Hitler's Germany, Stalin's Russia, Mao's China, Pol Pot's Cambodia.

That we do not connect these issues to the debate over arms and rights is disturbing. At a time when Steven Spielberg's film "Schindler's List" is justifiably considered one of the most significant and moving statements on the human condition, at a time when we have witnessed the brutal extermination of hundreds of thousands of people in a central African nation few of us had previously heard of, Rwanda, and as we sadly realize that this has been a century of holocausts with scores of millions murdered by their own Government, not to at least examine the issue and ask the questions concerning the desirability of the State's having a monopoly of force must stand as an incredible example of intellectual cowardice.

We should heed the words of former Vice President Hubert Humphrey, that exemplar of the optimism and faith in the people that was once the hallmark of post-War American liberalism. He said:

"Certainly one of the chief guarantees of freedom under any government, no matter how popular and respected, is the right of the citizen to keep and bear arms. This is not to say that firearms should not be very carefully used and that definite rules of precaution should not be taught and enforced. But the right of the citizen to bear arms is just one more safeguard against a tyranny which now appears remote in America, but which historically has proved to be always possible."

But this is America. Need we have such concerns? True, we have been spared ruled by dictators, but State tyranny can come in other forms. It can come when Government refuses to protect unpopular groups, people who are disfavored because of their political or religious beliefs, or the origins of their ancestors, or the color of this skin. Our past has not been free from this brand of State tyranny. In light of that history, how can we fail to rigorously question those who would force upon us a total reliance on the State for defense?

Nor should our discussion of freedom and the right to arms be limited to foreign and historical examples. The freedom of decent, law-abiding citizens throughout our Nation, but especially in our increasingly dangerous innercities, is constantly limited by criminal predators. And, yet, the move to limit the right to arms is most intense in such communities, as public officials attempt in vain to disarm criminal predators by denying the means of self-defense to entire communities, leaving citizens to the mercy of well-armed criminals and the police departments that are often powerless to protect those most at risk in our society.

This has led to another kind of curtailment of freedom. Consider the recent initiatives to require tenants in public housing to agree to allow their apartments to be searched as a condition for keeping or acquiring apartments. In too many communities, police officials for decades, for justifiable and far too frequently unjustifiable reasons, have failed to protect citizens in some of the most dangerous public housing projects. When the situation got sufficiently desperate, tenants were prohibited were prohibited from owning firearms for their own defense. Finally, the demand came; surrender

your freedom to privacy in your home, a guarantee promised in the fourth amendment. The message could not be clearer: a people incapable of protecting themselves will lose their status as a free people and will become either servile dependents of the State or of the criminal predators who are their *de facto* rulers.

The right to arms, thus, stands as no 18th century anachronism that we may safely leave with other now irrelevant historical relics. Instead, it is as vital today as it was when James Madison extolled the Americans' "advantage of being armed" more than two centuries ago.

But we are told that no one wants to destroy the right to arms, that the concern is only with a small group of "bad guns," the "weapons of choice" of criminals. But, sadly, there are no boundaries to the weapons that criminals prefer. Every gun has its unique dangers. The bolt-action rifle can fire the most powerful cartridges. The handgun is concealable, the shotgun the most deadly at close range. The semiautomatic can fire rapidly.

Indeed, over the last three decades, we have been treated to ever-changing definitions of bad guns. In the sixties we were told that military surplus bolt-action rifles, utilizing 19th century technology, were the bad guns. In the seventies we were then told that handguns were the enemy. Later we were told it was only inexpensive ones, the so-called Saturday Night Special. More recently, we have been assured that semiautomatic rifles are the problem. But, perhaps because there are so many semiautomatic rifles in public hands, we've been told not all semiautomatic rifles, only those with bayonet lugs, as if bayonet charges by drug pushers are a major crime concern in modern America. Or we are told only semiautomatic rifles with pistol grips. That has even less cogency. Bayonets, after all, can kill, though we suspect the incidence of such is rare, indeed, in America at the end of the 20th century. But pistol grips? Has anyone in human history been killed by a pistol grip? Obviously, the search for bad guns can continue *ad infinitum* and *ad absurdum*. The rights of peaceable citizens become more and more tenuous as every shift in criminal preference, real or imagined, becomes an excuse for those seeking wholesale prohibitions.

This has had tragic consequences. For it is the realization by millions of citizens who value the right to arms that they are faced not with a gun control movement, but, instead, a gun prohibition movement that has led to the bitter nature of our debate over gun control. It has also impeded our ability to find common ground on what should be an area of common concern: how to find the best means of doing the limited amount that we can to keep firearms out of the hands of criminals, the mentally disturbed, the chronically violent.

Finally, we must realize that our debate over arms and rights is driven by a tragic sociocultural meltdown in many sectors of our society. The evidence of this is apparent, indeed, inescapable. Within the last year, we have seen the murder of an 11-year-old boy in Chicago, the murdered child himself a suspect in other murders. Also within the last year, Rosa Parks, the mother of the civil rights movement, was mugged and injured in Detroit.

The tragedy of crime in the inner city is a threat to both the lives and liberties of all Americans. It is a product of our legacy of rac-

ism and neglect, now further fueled by an inconsolable sense of hopelessness on the part of all too many young people. This problem will not evaporate with quick fixes like wholesale gun prohibition. It will not improve as a result of political posturing. It will require, instead, our renewed commitment to repair the moral foundations of a peaceable society. If we do this, we will find no need to ban guns. If we fail, our guns will not save us.

Thank you, Mr. Chairman.

[The prepared statement of Messrs. Cottrol, Diamond, and Johnson follows:]

PREPARED STATEMENT¹ OF ROBERT COTTROL,² PROFESSOR OF LAW, RUTGERS SCHOOL OF LAW, CAMDEN, NJ, RAYMOND T. DIAMOND³ PROFESSOR OF LAW, TULANE UNIVERSITY SCHOOL OF LAW, AND NICHOLAS J. JOHNSON,⁴ ASSOCIATE PROFESSOR OF LAW, FORDHAM UNIVERSITY SCHOOL OF LAW, NEW YORK, NY

Mr. Chairman, members of the committee we are grateful for this opportunity to address the subcommittee on a matter of critical concern to the nation. Our testimony is uncompensated and we are not representing any group. We are a diverse group of scholars with views that range across the contemporary American political spectrum. We come here as students of law and public policy, concerned that a constitutional principle older than the republic itself⁵ is being eroded and perhaps worse yet trivialized by a deadly combination of reasonable and unreasonable fears, misinformation, cultural bigotry and intellectual neglect. We are concerned not only with the evisceration of this right but also

¹. Delivered, April 5, 1995, U. S. House of Representatives, Committee on the Judiciary, Subcommittee on Crime.

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⁵. For a look at the right to bear arms in 17th century England, predating the adoption of the second amendment to the United States Constitution see: Joyce Lee Malcolm, TO KEEP AND BEAR ARMS: THE ORIGINS OF AN ANGLO-AMERICAN RIGHT, (Cambridge, Ma., 1994). See also, Robert J. Cottrol and Raymond T. Diamond, The Fifth Auxiliary Right, 104 YALE LAW JOURNAL 995 (1995)

that what is now happening with one right may spread and ultimately truncate all of the rights that have been part of the unique heritage of our nation.

We speak, of course, of the right to keep and bear arms, a right that the framers of both the Second and the Fourteenth Amendments intended to protect.⁶ It is a right that is often little understood. Some have argued for a trivial view of the right, stating that it protects a right to have firearms for sporting purposes, target shooting, recreational hunting and similar pursuits. But as worthy as such activities are and despite the fact that they are enjoyed by tens of millions of decent, law-abiding citizens throughout the nation, to assume that a fundamental right was recognized by the Constitution simply to protect a hobby is to trivialize both the Constitution and the very serious legal and political thought that went into the drafting of that document. Others have seized upon the militia clause of the second amendment to argue that the amendment does not, despite its language, protect the right of the people at all. Instead, they claim, it was simply designed to protect the right of states to

⁶. For some of the scholarly literature discussing the intention of the 39th Congress (the Congress that sent the Fourteenth Amendment to the states) to safeguard the right to keep and bear arms against state deprivation see: Akhil Reed Amar, The Bill of Rights and the Fourteenth Amendment, 101 YALE LAW JOURNAL 1193, 1210-12 (1992); Robert J. Cottrol and Raymond T. Diamond, The Second Amendment: Toward an Afro-Americanist Reconsideration, 80 GEO. L. J. 309, 342-349; Michael Kent Curtis, NO STATE SHALL ABRIDGE: THE FOURTEENTH AMENDMENT AND THE BILL OF RIGHTS (1986) at 43, 52-53, 56, 72, 140-141, ; Stephen P. Halbrook, The Jurisprudence of the Second and Fourteenth Amendments, 4 GEO. MASON U. L. R. 1 (1981)

maintain militias.⁷ This is argued by all too many in public life despite the fact that it runs counter to overwhelming textual⁸ and historical⁹ evidence.

We would contend instead that the right to arms has something critical to say concerning the relationship between the citizen and the state. For most of human history, in most of the nations in the world, the individual has all too often been a helpless dependent of the state, dependent on the state's benevolence and

⁷. See, e.g. Erwin N. Griswold, Phantom Second Amendment "Rights", WASHINGTON POST, Nov. 4, 1990 at C7; Keith A. Ehrman and Dennis A. Hennigan, The Second Amendment in the Twentieth Century: Have You Seen Your Militia Lately? 15 U. DAYTON L. REV. 65 (1989)

⁸. See, e.g. Don B. Kates Jr., Handgun Prohibition and the Original Meaning of the Second Amendment 82 MICHIGAN LAW REVIEW 204 (1983) at 213-220 and Cottrol and Diamond, The Fifth Auxiliary Right at 1002-1003; Stephen P. Halbrook, What the Framers Intended: A Linguistic Analysis of the Right to 'Bear Arms' 49 LAW AND CONTEMPORARY PROBLEMS 151 (1986) and William Van Alstyne, The Second Amendment and the Personal Right to Arms, 43 DUKE LAW JOURNAL 1236 (1994) esp at. 1242-1244.

⁹. It is significant that among scholars in universities who are not professionally linked to pro or anti gun control advocacy groups and who have actually done systematic research on the Second Amendment, there has developed a nearly unanimous consensus that, as a matter of original intent, the Second Amendment was designed to protect an individual right to arms. This consensus is shared both by scholars who as a matter of public policy favor stricter controls on the availability of firearms as well as those who are against stricter controls. Indeed the historical evidence amassed by scholars demonstrating the original intention to protect an individual right has been so persuasive that it has caused two well known commentators, Michael Kinsley and George Will, both of whom are advocates for stricter controls on firearms, to concede the essential accuracy of the individual rights claim. See: Michael Kinsley, Slicing Up the Second Amendment, WASHINGTON POST, Feb. 8, 1990 at A25 and George Will, America's Crisis of Gunfire, WASHINGTON POST, March 21, 1991 at A21.

Space will not permit a thorough enumeration of the literature on the Second Amendment but those who are interested in the bibliography on this subject should see Cottrol and Diamond, The Fifth Auxiliary Right especially notes 6 through 17

indeed competence for his physical survival. The notion of a right to arms says something very different. It says that the individual is not simply a helpless bystander in the difficult and dangerous task of insuring his or her own physical safety. Instead the citizen is an active participant, an equal partner with the state in insuring not only his or her own safety but that of his or her community as well.

This is an important concept. It takes the individual from servile dependency on the state for survival to the status of participating citizen capable of making intelligent choices in defense of one's life and ultimately one's freedom. It is a concept that recognizes that the ultimate civil right is the right to defend one's own life, that without that right all other rights are meaningless and that without the means of self-defense that the right to self-defense is but an empty promise.

But ultimately the right to arms is about something more, it is a recognition of the dangers that are posed by giving the state a monopoly of force. We speak too little of this danger in modern day America. That is understandable. We are fortunate to live in a democratic and liberal nation, blessed with an essentially humane government. The idea of governmental tyranny and the need to resist it seems remote.

But history should give us pause. Who at the beginning of this century could have envisioned a homicidal maniac like Hitler ruling Germany, a nation renowned for its contributions to science, culture and scholarship? Could the horrors of the Nazi holocaust

have been lessened had there existed a more robust tradition of private firearms ownership in occupied Europe? Might resistance have been more effective? What if the heroic struggles of the people of the Warsaw ghetto had been magnified a thousand fold in hundreds of cities, towns and villages across Nazi occupied Europe aided by a more common tradition of arms ownership? Might that have alleviated one of the darkest blots on human history? It is a question that we should ask over and over again with respect to this bloody century where we have seen the devastating consequences of unchecked state monopolies of force and helpless civilian populations in Hitler's Germany, Stalin's Russia, Mao's China, Pol Pot's Cambodia. That we do not connect these issues to the debate over arms and rights is disturbing. At a time when Steven Spielberg's film "Schindler's List" is justifiably considered one of the most significant and moving statements on the human condition, at a time when we have witnessed the brutal extermination of hundreds of thousands of people in a central African nation few of us had previously heard of -- Rwanda, and as we sadly realize that this has been a century of holocausts with scores of millions murdered by their own government, not to at least examine the issue and ask questions concerning the desirability of the state's having a monopoly of force must stand as an incredible example of intellectual cowardice.

We should heed the words of former Vice President Hubert Humphrey, that exemplar of the optimism and faith in the people that was once the hallmark of postwar American liberalism:

Certainly one of the chief guarantees of freedom under any government, no matter how popular and respected is the right of the citizen to keep and bear arms. This is not to say that firearms should not be very carefully used and that definite rules of precaution should not be taught and enforced. But the right of the citizen to bear arms is just one more safeguard against a tyranny which now appears remote in America, but which historically has proved to be always possible.¹⁰

But this is America, need we have such concerns? True we have been spared rule by dictators. But state tyranny can come in other forms. It can come when government refuses to protect unpopular groups, people who are disfavored because of their political or religious beliefs, or the origins of their ancestors, or the color of their skin. Our past has not been free from this brand of state tyranny. In light of that history how can we fail to rigorously question those who would force upon us a total reliance on the state for defense?

Nor should our discussion of freedom and the right to arms be limited to foreign and historical examples. The freedom of decent, law-abiding citizens throughout our nation, but especially in our increasingly dangerous inner cities, is constantly limited by criminal predators. And yet the move to limit the right to arms is most intense in such communities as public officials attempt, in vain, to disarm criminal predators by denying the means of self-defense to entire communities, leaving citizens to the mercy of well armed criminals and the police departments that are often powerless to protect those most at risk in our society.

This has led to another kind of curtailment of freedom.

¹⁰. Hubert Humphrey, Know Your Lawmakers, GUNS, Feb. 1960 at 4.

Consider the recent initiatives to require tenants in public housing to agree to allow their apartments to be searched as a condition for keeping or acquiring apartments. In too many communities police officials for decades, for justifiable and far too frequently unjustifiable reasons, have failed to protect citizens in some of the more dangerous public housing projects. When the situation got sufficiently desperate tenants were prohibited from owning firearms for their own defense. Finally the demand came; surrender your freedom to privacy in your home, a guarantee promised in the Fourth Amendment. The message could not be clearer, a people incapable of protecting themselves will lose their status as a free people and will become either servile dependents of the state or of the criminal predators who are their de facto rulers.

The right to arms thus stands as no eighteenth century anachronism that we may safely leave with other now irrelevant historical relics, instead it is as vital today as it was when James Madison extolled the Americans' "advantage of being armed" more than two centuries ago.¹¹

But we are told no one wants to destroy the right to arms, that the concern is only with a small group of "bad guns," the "weapons of choice" of criminals. But sadly there are no boundaries to the weapons criminals prefer. Every gun has its unique dangers. The bolt action rifle can fire the most powerful

¹¹. THE FEDERALIST NO. 46 AT 319 (James Madison) (The Heritage Press, 1945)

cartridges. The handgun is concealable, the shotgun the most deadly at close range. The semiautomatic can fire rapidly. Indeed, over the last three decades, we have been treated to ever changing definitions of bad guns. In the sixties we were told that military surplus bolt action rifles, utilizing nineteenth century technology, were the bad guns. In the seventies we were then told that handguns were the enemy, later we were told it was only inexpensive ones, the so-called Saturday Night Special. More recently we have been assured that semi-automatic rifles are the problem. But, perhaps because there are so many semi-automatic rifles in public hands, we are told not all semi-automatic rifles, only those with bayonet lugs, as if bayonet charges by drug pushers are a major crime concern in modern America. Or we are told only semi-automatic rifles with pistol grips. That has even less cogency. Bayonets after all can kill, though we suspect the incidence of such is rare indeed in America at the end of the twentieth century. But pistol grips? Has anyone in human history been killed by a pistol grip? Obviously this search for bad guns can continue ad infinitum and ad absurdum. The rights of peaceable citizens become more and more tenuous as every shift in criminal preferences, real or imagined, becomes an excuse for those seeking wholesale prohibitions.

This has had tragic consequences. For it is the realization by millions of citizens who value the right to arms that they are faced not with a gun control movement, but instead a gun prohibition movement that has led to the bitter nature of our

debate over gun control. It has also impeded our ability to find common ground on what should be an area of common concern: how to find the best means of doing the limited amount that we can to keep firearms out of the hands of criminals, the mentally disturbed, the chronically violent.

Finally, we must realize that our debate over arms and rights is driven by a tragic socio-cultural meltdown in many sectors of our society. The evidence of this is apparent, indeed inescapable. Within the last year we have seen the murder of an 11 year old boy in Chicago, the murdered child himself a suspect in other murders. Also within the last year Rosa Parks, the mother of the civil rights movement, was mugged and injured in Detroit. The tragedy of crime in the inner city is a threat to both the lives and liberties of all Americans. It is a product of our legacy of racism and neglect now further fueled by an inconsolable sense of hopelessness on the part of all too many young people. This problem will not evaporate with quick fix solutions like wholesale gun prohibition; it will not improve as a result of political posturing. It will require instead our renewed commitment to repair the moral foundations of a peaceable society. If we do this we will find no need to ban guns. If we fail, our guns will not save us.

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Mr. MCCOLLUM. Thank you, Dr. Cottrol.

Welcome, Dr. Malcolm. We're ready to have you give your testimony, please.

STATEMENT OF JOYCE LEE MALCOLM, CHAIR, DEPARTMENT OF HISTORY, BENTLEY COLLEGE, WALTHAM, MA

Ms. MALCOLM. I want to thank you, Mr. Chairman and members of the committee, for inviting me to appear here this morning. This is an unusual honor for an historian of 17th and 18th century history and testament to the committee's real concern to understand the second amendment, the most controversial and least understood of our constitutional rights.

Some 10 years ago, a committee of attorneys was charged to report on the meaning of the second amendment to the American Bar Association. After an analysis, they threw up their hands and concluded, "It is doubtful that the Founding Fathers had any intent in mind with regard to this amendment." Happily, neither this committee, nor most of us, would regard the Founding Fathers as so frivolous, or our own understanding so weak, as this assessment implies. But few have time for the original research necessary to get to the truth, for while much has been written about gun control, until recently there was very little dispassionate scholarship.

Over the past 10 years, I have studied the history of this right from its English origins to its incorporation in the American Constitution. My intent has not been to add fuel to a sufficiently fiery debate, but to shed light on its development and, above all, on its meaning. My findings appear in a book, "To Keep and Bear Arms," that was published last year by Harvard University Press. And I should like to tell you briefly what I found.

I found that, until our own century, there was agreement that the second amendment protected an individual right to be armed and that it was a major cornerstone of freedom. The English historian, Thomas Macaulay, dubbed this "the security without which every other is insufficient," and the great American Justice, Joseph Story, proclaimed it "the palladium of the liberties of a republic." It was not until a movement began intent on curbing individual ownership of firearms that new interpretations emerged which denied that an individual right was ever intended.

I found that the right for individuals to be armed did not spring newborn from the perilous circumstances of the American frontier. Nor was it attributable to a love of hunting. It was a right the colonists brought from England; its enjoyment was guaranteed in their colonial charters. From early in the Middle Ages, what Englishmen called "time out of mind," they had been required to be armed to protect themselves and their neighbors. They had to take turns standing watch, to raise a "hue and cry" when crimes occurred, and then join a posse to pursue the culprits. They were also expected to participate in a militia to defend their homes and land. This system of citizen policing was a cheap method of keeping order, but it required trust, trust in the people.

One result of the crucial civil wars between King and Parliament in the 17th century was the transformation of this duty to be armed into a right. During the wars, both sides tried to arm their friends and disarm their enemies, as you would expect, and pru-

dent individuals stockpiled weapons. Once the monarchy was restored in 1660, the new King and aristocracy adopted a series of measures to disarm their political opponents and restrict public access to firearms. But when the next King, James II, used these measures to disarm loyal law-abiding Englishmen and expanded his army and threatened English liberty and religion, even his supporters became deeply alarmed. He was deposed in what Englishmen have ever since called their "Glorious Revolution," and his daughter, Mary, and son-in-law, William of Orange, succeeded him. Before they ascended the throne, however, members of the English Convention Parliament were careful to draw up a Declaration of Rights to reaffirm the rights of the people. It became the model for our own Bill of Rights just a century later.

Among the rights it listed was the right for Protestant Englishmen, who were then some 95 percent of the population, and I'm quoting, "to have arms for their defence, suitable to their condition and as allowed by law." The final clause, "suitable to their condition and as allowed by law," might have been employed to narrow the right, but when you look at the court records and statements, you find that it was not. Up until 1920, Englishmen had a right to have weapons for their personal defense.

The English right to have weapons was exclusively an individual right. Its drafters emphatically rejected language that would have given the people only the right to have arms "for their common defence," rather than "for their defence." The militia was not mentioned.

Just prior to the American Revolution, the great English jurist, William Blackstone, added a second dimension to the right. He saw the people's right to be armed as their protection when, in his words, "the sanctions of society and laws are found insufficient to restrain the violence of oppression." It would enable them to vindicate their other rights, should these be threatened. And it was this right with its dual purpose, individual protection and the protection of liberty, that the American colonists inherited and meant to perpetuate.

That was a quick tour through English history. Now for the second amendment.

Modern critics, ignorant of the historical tradition behind the second amendment, have derived an astonishing variety of meanings from its single sentence. They argue the purpose was to preserve State powers over State militia; that it merely protects the right of members of a militia—the National Guard of today; that the language "the right of the people" granted no one person a right to own a weapon. This last contention, of course, founders because it cannot be reasonably applied to the 1st, 4th, 9th, and 10th amendments, where reference is also made to the right of "the people."

As was the case with the English right, the second amendment was meant to accomplish two distinct goals, each crucial to the maintenance of liberty. It was meant to guarantee the individual's right to have weapons for self-defense, and these privately-owned arms were meant to serve the larger purpose Blackstone described, to give the people the means to vindicate their liberties in extremis.

The American right, of course, is not a duplicate of the English right. In fact, it's far broader, having no religious restrictions or reference to class. This was in keeping with colonial practice which had copied English peacekeeping techniques without those cautions.

And, instead of reference to what might be "allowed by law," the second amendment contains a prohibition against any infringement. It's sometimes pointed out that the debates during the Constitutional Convention and in the First Congress do not contain arguments about an individual right for citizens to be armed. They do not because there was no disagreement. Both Federalists and anti-Federalists, in ample testimony elsewhere, proclaimed this as a right of citizenship.

What the deliberations do contain is concern about the military power of the new Federal Government. Professional armies, unlike militia, were regarded as dangerous to liberty. Yet, the new Government was to have a standing army and to control State militia. Every State bill of rights had copied an English prohibition against a standing army in time of peace without the consent of the legislature, and five of the eight States that proposed specific amendments urged the Federal Government to include a similar prohibition.

It must have seemed more tactful to Congress to emphasize the need for a militia rather than to express distrust of an army. The second amendment, therefore, proclaimed that the militia was the necessary security of a free State. What sort of militia did they intend? There is abundant evidence that the intended militia was a general one. A select militia, like today's National Guard, was regarded as little better than an army, and I understand that members of the National Guard now have to be members of the Army.

Was the amendment intended to give militia powers back to the States? Not only does it fail to do so, but not one of the 97 amendments proposed by State ratifying conventions asked for any return of control. Moreover, the Senate specifically denied a Member's proposal to return militia powers to the States.

Of great importance for an accurate understanding of the Senate's intention at the time is its rejection of another amendment. Like the drafters of the English right, the Senators rejected a motion to add "for the common defense" after "to keep and bear arms." The American Bill of Rights recognized the individual's right to have weapons for his own defense, rather than for collective defense.

Newspapers of the time provide additional support that this was the intention. The Philadelphia Evening Gazette in an article reprinted in New York and Boston explained the aim of the second amendment in this way: "As civil rulers, not having their duty to the people duly before them, may attempt to tyrannize, and as the military forces which must be occasionally raised to defend our country, might pervert their power to the injury of their fellow citizens, the people are confirmed . . . in their right to keep and bear their private arms." Nothing is said about the militia.

Where does this leave us? As an English attorney said in the 19th century of the right to assemble, apparently, and I'm quoting, "our ancestors were pleased rather to enjoy a condition of perilous

freedom than a state of abject tranquillity in the condition of slaves." Are we? Should the second amendment be permitted to go the way of the English right to be armed, as a dangerous relic of another era?

In fact, of course, it can't be legislated out of existence. But while it's unconstitutional to legislate a right out of existence, this particular right is threatened with misinterpretation to the point of meaninglessness. Granted, this is a far easier method than amendment, but it is also the way of danger. For to ignore all evidence of the meaning and intent of one of those rights included in the Bill of Rights is to create the most dangerous sort of precedent, one whose consequences could flow far beyond this one issue and endanger the fabric of our liberty.

Should the second amendment be altered or eliminated through amendment? Before that's considered, it's imperative to grant the founders of our Constitution, whose wisdom in so much else has borne the test of time, the courtesy of considering why they included this right. Are armies still a threat to a 20th century world? Should Government have a monopoly of force? Are individuals still in need of personal weapons for their self-defense? I am not an advocate but an historian, and I ask merely for a decent respect for the past. We are not forced into lockstep with our forefathers, but we owe them our considered attention before we disregard a right they felt it imperative to bestow upon us.

Thank you.

[The prepared statement of Ms. Malcolm follows:]

PREPARED STATEMENT OF JOYCE LEE MALCOLM, CHAIR, DEPARTMENT OF HISTORY,
BENTLEY COLLEGE, WALTHAM, MA

I want to thank you, Mr. Chairman, and members of the committee for inviting me to appear here this morning. This is an unusual honour for an historian of seventeenth- and eighteenth-century history, and testament to the committee's real concern to understand the Second Amendment, the most controversial and least understood of our constitutional rights. Twenty years ago a committee of attorneys charged to report on the meaning of the Second Amendment for the American Bar Association threw up their hands and concluded, "It is doubtful that the Founding Fathers had any intent in mind with regard to the meaning of this Amendment." Happily neither this committee nor most of us would regard the Founding Fathers as so frivolous, or our own understandings as so weak, as this assessment implies. But few have time for the original research necessary to get to the truth, for while much has been written about gun control there has been little dispassionate scholarship. Over the past ten years I have studied the history of this right from its

English origins to its incorporation in the American constitution. My intent has not been to add fuel to a sufficiently fiery debate, but to shed light on its development and above all on its meaning. I should like to tell you briefly what I found.

I found that until our own century there was agreement that the Second Amendment protected an individual right to be armed and that it was a major cornerstone of freedom. The English historian Thomas Macaulay dubbed this "the security without which every other is insufficient" and the great American justice, Joseph Story, proclaimed it "the palladium of the liberties of a republic." It was not until a movement began to curb individual ownership of firearms that new interpretations emerged which denied an individual right was ever intended.

I found that the right for individuals to be armed did not spring newborn from the perilous circumstances of the American frontier. Nor was it attributable to a love of hunting. It was a right the colonists brought from England, its enjoyment guaranteed in their colonial charters. From early in the middle ages Englishmen had been required to be armed to protect

themselves and their neighbors. They had to take turns standing watch, to raise a "hue and cry" when crimes occurred and then join a posse to pursue the culprits. They were also expected to participate in a militia to defend their homes and land. This system of citizen policing was a cheap method of keeping order. But it required trust, a trust in the people.

One result of the crucial civil wars between king and Parliament in the seventeenth century was the transformation of this duty to be armed into a right. During the wars both sides tried to arm their friends and disarm their enemies while prudent individuals stockpiled weapons. Upon the restoration of monarchy in 1660 the new king and royalist aristocracy adopted a series of measures to disarm their political opponents and restrict the public's possession of firearms. But when the next king, James II, used these measures to disarm law-abiding Englishmen, expanded his army and threatened English liberty and religion even his supporters became deeply alarmed. He was deposed in what Englishmen have ever since called their Glorious Revolution, and his daughter Mary and son-in-law William of Orange succeeded him. Before they ascended the throne, however, members of the English Convention Parliament took care to draw up a Declaration of Rights to reaffirm the rights of the people. It became the

model for our own Bill of Rights a century later. Among the rights it listed was a right for Protestant Englishmen--some 95% of the population--"to have arms for their defence, suitable to their condition and as allowed by law." The final clause, "suitable to their condition and as allowed by law," might have been employed to narrow the right, but it was not. Up until 1920 Englishmen had a right to have weapons for their personal defence.

The English right to have weapons was exclusively an individual right. Its drafters emphatically rejected language that would have given the people the right to have arms "for their common defence" rather than "for their defence." The militia was not mentioned.

Just prior to the American revolution the great English jurist, William Blackstone, added a second dimension to the right. He saw the people's right to be armed as their protection when "the sanctions of society and laws are found insufficient to restrain the violence of oppression." It would enable them to 'vindicate their other rights should these be threatened. It was this right with its dual purpose--individual protection and the protection of liberty--that the American colonists inherited and meant to perpetuate.

Now for the Second Amendment. Modern critics, ignorant of the historical tradition behind the Second Amendment, have derived an astonishing variety of meanings from its single sentence. They argue that the purpose was to preserve state powers over state militia; that it merely protects the right of members of a militia--the National Guard of today; that the language "the right of the people" granted no one person a right to own a weapon. This last founders because it cannot be reasonably applied to the First, Fourth, Ninth, and Tenth Amendments where reference is also made to the right of "the people."

As was the case with the English right, the Second Amendment was meant to accomplish two distinct goals, each crucial to the maintenance of liberty. It was meant to guarantee the individual's right to have weapons for self-defence, and these privately owned arms were meant to serve the larger purpose Blackstone described, to give the people the means to vindicate their liberties in extremis.

The American right is not a duplicate of the English right. It is far broader, having no religious restrictions or reference to class. This was in keeping with colonial practice which had copied English peacekeeping techniques without those cautions.

And instead of reference to what might be "allowed by law" the Second Amendment contains a prohibition against any infringement. It is sometimes pointed out that the debates during the constitutional convention and in Congress do not contain arguments about an individual right for citizens to be armed. They do not because there was no disagreement. Both federalists and anti-federalists, in ample testimony elsewhere, proclaimed this a right of citizenship. What the deliberations do contain is concern about the military power of the new federal government. Professional armies, unlike militia, were regarded as dangerous to liberty, yet the new government was to have a standing army and to control state militia. Every state bill of rights had copied an English prohibition against a standing army in time of peace without consent of the legislature, and five of the eight states that proposed specific amendments urged the federal government to include a similar prohibition. It must have seemed more tactful to Congress to emphasize the need for a militia, rather than to express distrust of the army. The Second Amendment, therefore, proclaimed that the militia was the necessary security of a free state. What sort of militia did they intend? There is abundant testimony that the intended militia was a general one. A select militia--like today's

National Guard--was regarded as little better than an army.

Was the amendment intended to give militia powers back to the states? Not only does it fail to do so, but not one of the ninety-seven amendments proposed by state ratifying conventions asked for a return of any control. Moreover, the Senate specifically denied a member's proposal to return militia powers to the states. Of great importance for an accurate understanding of the Senate's intentions at the time is its rejection of another amendment. Like the drafters of the English right the senators rejected a motion to add "for the common defense" after "to keep and bear arms." The American Bill of Rights recognized the individual's right to have weapons for his own defence, rather than for collective defence. Two newspapers of the time provide additional support that this was the intention. The anti-Federalist Centinel found that "the absolute command vested by other sections in Congress over the militia, are not in the least abridged by this amendment." And the Philadelphia Evening Gazette in an article reprinted in New York and Boston explained the aim of the Second Amendment in this way: "As civil rulers, not having their duty to the people duly before them, may attempt to tyrannize, and as the military forces which must be occasionally raised to defend our country, might pervert their

power to the injury of their fellow-citizens, the people are confirmed...in their right to keep and bear their private arms."

Where does this leave us? As an English attorney said of the right to assemble, apparently "our ancestors were pleased rather to enjoy a condition of perilous freedom than a state of abject tranquillity in the condition of slaves." Are we? Should the Second Amendment be permitted to go the way of the English right to be armed, as a dangerous relic of another era? In fact it can not be legislated out of existence. While it is unconstitutional to legislate a right out of existence, this particular right is threatened with misinterpretation to the point of meaninglessness. Granted, this is a far easier method than amendment, but it is also the way of danger. For to ignore all evidence of the meaning and intent of one of those rights included in the Bill of Rights is to create the most dangerous sort of precedent, one whose consequences could flow far beyond this one issue and endanger the fabric of liberty.

Should the Second Amendment be altered or eliminated through amendment? Before that is considered it is imperative to grant the founders of the American Constitution, whose wisdom in so much else has borne the test of time, the courtesy of considering why they included this right. Are armies still a threat to a

twentieth-century world? Should government have a monopoly of force? Are individuals still in need of personal weapons for their self-defence? I am not an advocate but a historian and ask merely for a decent respect for the past. We are not forced into lockstep with our forefathers. But we owe them our considered attention before we disregard a right they felt it imperative to bestow upon us.

Mr. McCOLLUM. Thank you, Dr. Malcolm.

Dr. Polsby, welcome and please proceed with your testimony.

**STATEMENT OF DANIEL D. POLSBY, KIRKLAND AND ELLIS
PROFESSOR OF LAW, NORTHWESTERN UNIVERSITY, CHI-
CAGO, IL**

Mr. POLSBY. Thank you, Mr. Chairman. I'm not a proper doctor, unlike Professor Cottrol and Professor Malcolm, but just an ordinary lawyer.

The overwhelming burden of conviction among those who have published research on the subject of the second amendment is that its drafters intended it to secure an individual and not a collective right, not a right that was dependent upon membership in an organized soldiery such as the National Guard. A number of those who have reached that conviction are persons like myself who are not gun hobbyists nor gun owners nor members of the NRA.

It is beyond all rational doubt that in the view of the Founders the right to keep and bear arms was an important check on Federal power. We shouldn't be arguing about that. The purpose of an armed population was to guarantee that the central Government could not possess a monopoly of force and to assure that citizens would possess the wherewithal to defend themselves and their communities from tyrants and wrongdoers. To the extent that the original intentions of the founders are considered binding in constitutional analysis, that is that.

Two important constitutional norms are, thus, established: one that focuses on the moral personality of individuals—that is, that persons should have the right to defend themselves with arms—and one that focuses on the supposed bad tendencies of Government which, by assumption, would be deterred and moderated if deprived of a monopoly of legal force. The question for today is how these norms ought to work their way into contemporary constitutional law.

One of the byproducts of denying the current relevance of the second amendment has been that we have not had nuanced public conversations on this subject in the way that we have with respect to the first amendment and all of its five operative clauses or the fourth amendment, and so on. Thus, apart from a failure adequately to consider the propositions of moral philosophy and political science that undergird the right to keep and bear arms, several important technical legal issues remain for all intents and purposes unresolved.

For example, there is the question of incorporation; that is, whether the 14th amendment makes the 2d amendment operative as against the States, as all the rest of the Bill of Rights is understood to be. There are, as has been mentioned today, a number of Federal courts that have held that there is no incorporation with respect to the second amendment, so that it would not be operative as against the States, but those are authorities essentially rely on an old Supreme Court authority that held that, and that was decided generations before the incorporation doctrine was invented. So the proposition that the second amendment does not apply as against the States is a product, in effect, of the era that holds that

neither is the first amendment applicable against the States. That's all by the boards.

Like all constitutional rights, the right to keep and bear arms is subject to reasonable regulation consistent with its purposes. We have not sorted out adequately what standard of scrutiny courts should employ in judging gun control laws, whether it should be strict scrutiny or intermediate scrutiny or some other formulation. But whatever standard of scrutiny we adopt, it seems to me the most important thing, especially for this body, should be to pay attention to what the facts are because those standards of scrutiny are essentially invitations to scrutinize underlying facts.

Virtually no constitutional scholar, contemporary constitutional scholar, would pretend that the facts don't matter. So we have to know the facts about firearms, how they're used, and how they're abused, and what good and what harm follow from their relatively easy availability and wide diffusion in the population. We need to know these things, and it seems to me that we need to refrain, if at all possible, from propagandizing about it or introducing sensational data or statistics in lieu of rational argument and consideration.

I'm now going to just give you an example of that from data that we have secured in Chicago where published homicide and firearms statistics are kept more carefully and in more detail than the FBI keeps them, at least publicly, for the country as a whole. And so we have in counterpoint myths and realities.

The myth: assault weapons have become the weapon of choice among drug dealers. The fact: in 1992, rifles and shotguns of all kinds accounted for 27 of Chicago's 940 murders. That's about 2 percent. According to—that's rifles and shotguns of all kinds, not just assault weapons. According to the Chicago police, what are described as assault weapons, military-style weapons, were involved in three murders in the last 3 years. That's out of about 2,500, three out of 2,500. "Assault weapons have become the weapon of choice among drug dealers."

The myth: most murders involve friends or family members. The fact: in 1992, intrafamilial homicides with and without firearms represented 69 of 940 murders. That's about 7 percent. Friends and neighbors and the friends of friends and the friends of relatives added 73 more. By far, the largest categories were nonfriend acquaintances, 252, and relationship not established, 344; in other words, overwhelmingly, gang violence and random and, hence, untraceable acts of criminals. The numbers I just gave you, 1992; the numbers for 1991 and 1993 are the same, and the 1994 numbers will be coming out soon.

The myth: the overwhelming majority of people who shoot to kill are not criminals. The fact: in 1992, 72.4 percent of murder perpetrators that we caught and 65.5 percent of victims had criminal histories. In 1993, the numbers were comparable. National data are equally eye-opening.

The myth: possession of guns turn ordinary law-abiding people into ticking timebombs. The fact: though the stock of handguns in private hands has increased by two-thirds in the recent decade, rates of spousal homicide have been stable or falling during that period of time. Though the national murder rate has fluctuated

considerably in the past 15 years and is now beginning to approach again the very high levels that it reached in the late 1970's, the proportion of homicides that represent what we would ordinarily call manslaughter—that is, the product of impulsive killings provoked in the course of an argument or some such—the proportion of manslaughters has been markedly declining.

Now no one doubts that we have a serious problem with guns and crimes in American society, but the inference that the guns are out there causing the crime is more or less kindred in my view to the inference that beaded purses are causing prostitution. If you catch my meaning, most—when I was a boy growing up in this town, along 13th Street north of Scott Circle, I believe, prostitutes would crowd against the curb, dozens of them per block, and they would all be in a certain uniform so you could identify them. A beaded purse was a part of the uniform. The District of Columbia might, in the idiom of its gun control laws, have banned beaded purses as a first rational step toward controlling this public health problem, and *mirabile dictu*, would find themselves having gotten nowhere.

The ready availability of weapons does not appear to be, in the work that I do, an important cause of crime. When I was growing in the 1950's—those of you that were born toward the end of the Second World War will remember this—for ten to a few hundred dollars you could mail order .45 automatics, German Lugars, ammunition, high-powered rifles, trench mortars, bazookas, and ammunition—anything you needed to start a war. All you had to do was check a box that said, "I am over 21" or maybe it was 18; I don't remember. But my mother wouldn't let me send away. So I don't remember that detail.

In those days we had crime rates about a fifth of what we have now, violent crime rates, by some measures, a fifth or a sixth of what we have now; murder rates, half of what we have now. No one ever heard of a crime committed with a trench mortar or a bazooka, although there must have been thousands of them out there in private hands. There must still be.

Without question, murder and other violent crimes are on at unacceptably high levels in this country, but the evil has got sharply worse only very locally in the national statistics, and not uniformly. The country as a whole has been getting noticeably more law-abiding and less violent for 15 or so years, according to the National Household Survey, even as the stock of privately-owned firearms has burgeoned.

The part of the problem that is definitely changing for the worst, intentional murder and felony murder, that's the margin; that's what you can effect with legislation. The part of the problem that is definitely getting worse is the violent crime statistics for younger adolescent boys and their older brothers. The rate of both delinquency and victimization for 12- to 15-year-old boys used to resemble that for their parents' age cohort. Now their behavior more nearly resembles that of their older brothers, young men in their late teens and twenties who are, as always, the most at-risk part of the populations.

Matters have been deteriorating somewhat across race lines, but the numbers that really jump out of the statistical abstract data

book are in the homicide mortality rates, that is, the rates of victimization among African-American young men ages 15 through 35, which have got to two to two-and-one-half times worse than the already outrageously high rates that they were before, just since 1984—just in the last 10 years. And they now stand on a national basis at about 1 in 1,000, which is 10 times worse than the statistic for the population as a whole.

The conventional reading of this experience is that we have a supply side problem. There are too many guns out there, we have heard: enumerable times. I found a thousand hits on that phrase in Nexis within 10 of “gun control.” Most gun control laws have been aimed at reducing the supply of firearms by placing taxes—time taxes, money taxes, stigma taxes—on them or banning them altogether or banning supposedly bad guns like assault weapons or Saturday Night Specials or handguns, or what have you. These strategies are only as good as the assumptions upon which they are based. The assumption that there are too many guns or that the guns out there are especially bad is simply unfounded. The number of firearms, for one thing, is not fixed or finite, and there’s very little that Congress can do about that.

The problem of firearms is a demand side problem, and if you wish to address yourselves to it seriously, then you must get a better appreciation of why young men are demanding guns when they never did before, what they do with them once they get them, and what can be done to induce them to act responsibly with firearms. These are subjects, obviously, for another day, but they lie at the heart of the darkness, rather than the numerocity of weapons.

Everybody appreciates that firearms are a part of the problem in the wrong hands, but it’s also widely accepted that they are a part of the solution when in the right hands. That is the main theory behind the 100,000 extra cops provision in last year’s crime bill that had broad bipartisan support. That, once you accept that, that sort of acknowledges the premise in my view that it isn’t just the number of guns, but how they’re distributed that’s crucial.

A regulatory regime that fails to respect the difference between guns in the right hands and guns in the wrong hands is going to fail and aggravate an already-bad situation, but what is worse will affront the rule applied elsewhere in constitutional law that legal burdens on constitutional rights, the right to keep arms to defend one’s self, must be no broader than necessary to realize a substantial Government purpose and must be incidental, which is to say inspired by some motive other than antipathy toward the underlying constitutional norm.

Thank you.

[The prepared statement of Mr. Polsby follows:]

PREPARED STATEMENT OF DANIEL D. POLSBY, KIRKLAND AND ELLIS PROFESSOR OF
LAW, NORTHWESTERN UNIVERSITY, CHICAGO, IL

How one should interpret the Second Amendment is a matter of opinion. How the drafters of the Second Amendment understood its text and function is also a matter of opinion, although here special weight is accorded to the views of professional historians and constitutional scholars who have inquired into the matter. *The overwhelming burden of conviction among those who have published research on the Second Amendment is that its drafters meant it to secure an individual right and not a "collective right" -- as though there could be such a thing -- that was dependent on membership in an organized soldiery.* See: Clayton E. Cramer, *For the Defense of Themselves and the State* (Praeger, 1994); Joyce Lee Malcolm, *To Keep and Bear Arms: The Origins of an Anglo-American Right* (Harvard University Press, 1994); Stephen Halbrook, *That Every Man Be Armed* (University of New Mexico Press, 1984); William W. Van Alstyne, *The Second Amendment and the Personal Right to Arms*, 43 DUKE LAW JOURNAL 1236 (1994); Glenn Harlan Reynolds, *The Right to Keep and Bear Arms Under the Tennessee Constitution*, 61 TENNESSEE LAW REVIEW 647 (1994); Nicholas J. Johnson, *Beyond the Second Amendment*, 24 RUTGERS LAW JOURNAL 1 (1992); Don B. Kates, Jr., *The Second Amendment and the Ideology of Self-Protection*, 9 CONSTITUTIONAL COMMENTARY 87 (1992); Robert J. Cottrol and Raymond T. Diamond, *The Second Amendment: Toward an African-Americanist Reconsideration*, 80 GEORGETOWN LAW JOURNAL 309 (1991); David C. Williams, *Civic Republicanism and the Citizen Militia: The Terrifying Second Amendment*, 101 YALE

LAW JOURNAL 551 (1991); Akhil Reed Amar, *The Bill of Rights as a Constitution*, 100 YALE LAW JOURNAL 1131 (1991); Elaine Scarry, *War and the Social Contract: The Right to Bear Arms*, 139 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 1257 (1991); Sanford Levinson, *The Embarrassing Second Amendment*, 99 YALE LAW JOURNAL 637 (1989); Nelson Lund, *The Second Amendment, Political Liberty, and the Right to Self-Preservation*, 39 ALABAMA LAW REVIEW 103 (1988); David T. Hardy, *The Second Amendment and the Historiography of the Bill of Rights*, 4 JOURNAL OF LAW & POLITICS 1 (1987); Robert E. Shalhope, *The Armed Citizen in the Early Republic*, 49 JOURNAL OF LAW AND CONTEMPORARY PROBLEMS 125 (1986); David T. Hardy, *Armed Citizens, Citizen Armies: Toward a Jurisprudence of the Second Amendment*, 9 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 562 (1986); Lawrence D. Cress, *An Armed Community: The Origins and Meaning of the Right to Bear Arms*, 71 JOURNAL OF AMERICAN HISTORY 22 (1984); Don B. Kates, Jr., *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 MICHIGAN LAW REVIEW 203 (1983).

A number of those who have reached the conclusion that there is an individual right to keep and bear arms are, like myself, non-gun-owning non-firearms hobbyist non-members of the NRA. Nor, surely, am I the only one whose opinion on the original understanding of the Second Amendment was turned 180 degrees by a deeper study of a subject than was afforded in the Constitutional Law courses of twenty-five years ago.

It is beyond all rational doubt that, in the view of the Founders, the right to keep and bear arms was an important check on federal power. The purpose of an armed population was to guarantee that the central government could not possess a monopoly of force and to assure that citizens would have the wherewithal to defend themselves and their communities from tyrants and wrongdoers. To the extent that "original intentions" govern constitutional law, there is little more to be said. The existence of

two important constitutional norm is thus established, one that focuses on the moral personality of individuals (i.e., people *should* have a right to defend themselves with arms) and one that focuses on the supposed bad tendencies of government (which would by assumption be deterred and moderated if deprived of a monopoly of legal force).

The question for today is how those norms ought to work out into contemporary law. One of the byproducts of denying the current relevance of the Second Amendment has been that we have not had nuanced public conversations about the keeping and bearing of arms analogous to those on the subject of the freedom of speech, the right of assembly, the freedom of religion, or almost all of the other subjects of the Bill of Rights. Thus, apart from a failure adequately to consider the propositions of moral philosophy and political science that undergird the right to keep and bear arms, several important technical legal issues continue to be essentially unresolved. For example, there remains outstanding the question of incorporation -- whether the Fourteenth Amendment makes the Second Amendment operative as against the states, as all the rest of the Bill of Rights is understood to be. *Quilici v. Village of Morton Grove*, 695 F.2d 261 (7th Cir. 1982), probably the most important of the cases to consider the matter, rests the answer to this question neither on argument nor analysis of the right, but rather on the authority of a old Supreme Court case, *Presser v. Illinois*, 116' US 252 (1886), that was decided many years before the "incorporation" doctrine was conceived.

Like all constitutional rights, the right to keep and bear arms is subject to reasonable regulation consistent with its purposes. But what standard of scrutiny should courts employ in judging gun control laws? "Strict"? "Intermediate"? "Rational basis"? "Rational basis with teeth"? Irrespective of what one calls a standard of scrutiny, the underlying substance of reasonable regulation -- the thing that makes a given regulation

reasonable or unreasonable -- is factual. A very few naive intentionalists to one side, virtually no contemporary constitutional scholar would pretend that one could decide a case without knowing (or assuming) the facts of the dispute or the facts that might be expected to follow from a decision one way or the other. For example, the First Amendment theory embodied in the *Pentagon Papers Case* (*New York Times Co. v. United States*, 403 U.S. 713 (1971)) could not soberly be defended (most constitutional theorists would say) if its result led straightway to the downfall of civilization as we know it. Similarly, the facts about firearms -- how they are used and how abused, what good and what harm follows from their relatively easy availability and wide diffusion in the population -- ought to matter to how one interprets the Second Amendment.

In connection with this question, the noise has been so shrill and melodramatic that it has been difficult to hear oneself think. So much misinformation has been put about concerning the trends of crime and violent crime and the concurrent role of firearms that members of the public are essentially lost when it comes to evaluating both the claims about firearms and violence and the nostrums that have been proposed to deal with them. A few examples follow, based on the experience in Chicago, where published homicide and firearms statistics are kept more carefully than almost anywhere else in the world.

The myth: Assault weapons have become the "weapons of choice among drug dealers." **The fact:** in 1992, rifles and shotguns *of all kinds* accounted for 27 of Chicago's 940 murders, about 2%. **According to Chicago police, during the past three years only three murders (out of about 2500) were committed with assault weapons.** (Source: CHICAGO TRIBUNE, July 7, 1994, section 2, page 1, column 4).

The myth: most murders involve friends or family members. **The fact:** in 1992, intrafamilial homicides, with and without firearms, represented 69 of 940

murders -- about 7%. Friends, neighbors and the friends of friends and relatives, added 73 more. *By far the largest categories were non-friend acquaintances (252) and "relationship not established" (344)* -- in other words, overwhelmingly, gang violence and the random (and hence untraceable) acts of criminals. (The numbers for 1993 (and other recent years) are comparable.)

The myth: "The overwhelming majority of people who shoot to kill are not convicted felons; in fact most would be considered law-abiding citizens prior to their pulling the trigger." [Webster, Chaulk, Teret & Wintemute, *Reducing Firearms Injuries*, ISSUES IN SCIENCE & TECHNOLOGY, Spring 1991, at page 73.] **The fact:** in 1992, 72.4% of murder perpetrators and 65.5% of victims had criminal histories. In 1993, the numbers were 71.7% of perpetrators and 59.3% of victims.

National data can be equally eye-opening. For example:

The myth: Guns turn ordinary law abiding people into ticking time-bombs. "Take a successful businessman who ordinarily has complete control of his emotions. If you stick a gun in his hand when he is under stress, the feeling of power can become overwhelming. This man becomes fearless. He is a different person, and his otherwise good judgment may suddenly desert him. At any moment, this killer personality can present a danger to his wife and loved ones." (Joseph D. McNamara, *SAFE AND SANE*, page 67 (1984)). **The fact:** Though the stock of handguns in private hands has increased by two-thirds in recent years, rates of spousal homicide have been stable or falling during that period of time. (James A. Mercy and Linda E. Salzman, *Fatal Violence Among Spouses in the United States, 1976-1985*, 79 *AMERICAN JOURNAL OF PUBLIC HEALTH* 595 (1989)). Though the national murder rate has fluctuated considerably during the past fifteen years, and has recently been approaching the very high rates of the late 1970's, the proportion of homicides that represent what is usually

called manslaughter -- killings provoked in the course of arguments, and thus to some degree impulsive -- has been markedly declining. That category represented 40% of homicides in 1980 and 32% in 1991. (STATISTICAL ABSTRACT OF THE UNITED STATES 1993 NATIONAL DATA BOOK, page 195, table 304.)

No one doubts that we have a serious problem with guns and crime in American society, but the inference that the guns are out there causing the crime is specious. The ready availability of weapons does not appear to be an important cause of crime. When I was growing up in the 1950's -- some people in this room will remember this -- for ten to a few hundred bucks you could mail order Army surplus .45 automatics, German Lugars, high-powered rifles, trench mortars -- bazookas, even, if I rightly recollect -- ammunition, anything you needed to start a war; and all you had to do was check a box that said "I am 21 years old or older." In those days, we had crime rates, and murder rates, much lower than those today -- and one never heard of a crime committed with a trench mortar or a bazooka, though there must have been (and there may still be) many thousands of them around in private hands.

Without question murder and other violent crimes are at unacceptably high levels in this country, but the evil has got sharply worse only very locally in the national statistics. The country as a whole has been getting noticeably more law-abiding and less violent for fifteen or so years -- even as its stock of privately owned firearms has burgeoned. The margin -- the part of the problem that is definitely changing for the worse -- is the murder part -- intentional murder and felony murder. Even these numbers are not changing globally or evenly. Indeed, the rates of homicide for both white and African-American populations *as a whole* has been in a secular decline over the past fifteen years.

But the violent crime statistics of younger adolescent boys have been getting dramatically worse. The rates of both delinquency and victimization for twelve-to-fifteen year old boys used to resemble that of their parents' age cohort. Now their behavior seems more nearly to resemble that of their older brothers, young men in their late teens and twenties, who are always the most at-risk part of the population. Though matters have been deteriorating somewhat across race lines, the numbers that really jump out of the Statistical Abstract Data Book in are the homicide mortality rates -- that is, rates of victimization -- for African-American young men ages fifteen through 35, which have gotten two to two-and-one-half times worse just in the past decade, and now stand, on a national basis, at near one in one-thousand -- ten times worse than the statistic for the whole population.

The conventional reading of this experience is that we have a supply side problem. "There are too many guns out there," has been the refrain of innumerable public officials and political activists (I found almost 1000 hits on Nexis). Most gun control laws have been aimed at reducing the supply of firearms, by placing time taxes or money taxes or stigma taxes on them, or banning certain supposedly "bad" guns altogether (for example, handguns or "Saturday night specials" or "assault rifles"). Unfortunately, such strategies are only as good as the assumption they are based on. And that assumption -- that there are "too many guns" or that certain guns are especially "bad" -- is unfounded.

The number of firearms is not fixed or finite, and there is little that Congress can do about that. In the presence of strong demand, supplies find ways of appearing. *The problem of firearms is a demand side problem*, and in order to do something about the factors in the equation that are definitely getting worse, one must understand why young men are demanding guns when they never did before, what they do with them

once they get them, and what can be done to induce them to act responsibly with firearms. These are subjects for another day, but they lie at the heart of the darkness.

Everyone appreciates that firearms are a part of the problem when in the wrong hands. But it is also widely accepted that they are a part of the solution when in the right hands -- this is, after all, the main theory behind the "100,000 extra cops" provision in last year's crime bill. Regulatory regimes that fail to respect the distinction between the "right" hands and the "wrong" hands are bound to fail and thereby aggravate an already bad situation. But what is worse, they are bound to affront the rule, applied elsewhere in constitutional law (see, e.g., *O'Brien v. United States*, 391 U.S. 367 (1968)), that legal burdens on a constitutional right must be no broader than necessary to realize a substantial government purpose, and must be *incidental* -- which is to say, inspired by some purpose other than antipathy toward the underlying constitutional norm.

To be sure, the Second Amendment and the values it stands for are a great embarrassment -- Professor Levinson's word -- to most of America's cultural elite. Be that as it may, the right to keep and bear arms is a legitimate, full-fledged part of the Bill of Rights. Because the authority of this body derives exclusively from the Constitution, its members are not at liberty to address the question of gun control as though there were no Second Amendment.

Mr. McCOLLUM. Thank you, Mr. Polsby.

Mr. Henigan, welcome. We'll be very glad to hear your testimony.

**STATEMENT OF DENNIS A. HENIGAN, GENERAL COUNSEL,
HANDGUN CONTROL, INC., WASHINGTON, DC**

Mr. HENIGAN. Thank you, Mr. Chairman and members of the subcommittee. I'm very grateful for the opportunity to address the constitutional implications of gun control and to respond to my colleagues on the panel.

My message today is simple and it's unequivocal. The second amendment is not an impediment to gun control laws. Any argument to the contrary ignores every court ruling on the issue in the last 50 years. And, Mr. Chairman, the rulings of courts matter. The meaning of a constitutional provision is determined not by professors, not by gun control advocates, and not by congressional committees. It is determined by the courts. And on this issue the courts have spoken with one voice, rejecting the existence of an individual right to be armed for private purposes unrelated to a well-regulated militia and consistently upholding gun control laws of all kind.

Earlier you heard the words of former Chief Justice Warren Burger, himself a gun owner, who was angered by the systematic distortion of second amendment case law by the National Rifle Association and its supporters. He said that this issue was the subject of lies and misrepresentations. Strong words, but absolutely right.

Any principled interpretation of the second amendment must begin with the realization that it consists of 27 words, not 14: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The text raises the question: if the framers intended to create a broad individual right to be armed, why did they include all the language about a well-regulated militia and its importance to the security of a free State? After all, the framers knew how to create broad individual rights. They did that in the unqualified demands of the first amendment. "Congress shall make no law abridging the freedom of speech or of the press." If the framers had sought to create an unqualified individual right to be armed, they would have used unqualified language. They did not.

The phrase "a well regulated Militia" is central to the meaning of the second amendment. In its seminal second amendment decision, *United States v. Miller*, the U.S. Supreme Court held that the "obvious purpose" of this amendment was "to assure the continuation and render possible the effectiveness" of the State militia. It added, the amendment "must be interpreted and applied with that end in view."

What is the meaning of this mysterious reference in the second amendment to a well-regulated militia? It is a phrase that is foreign to contemporary ears, but it meant a great deal to the Founding Fathers. The key error of pro-gun legal theorists in interpreting the second amendment is that they treat the militia as if it were a term synonymous with an ad hoc collection of armed citizens, a term synonymous with the armed citizenry at large. This is a historical inaccuracy.

Although the militia of the early 18th century was composed of most able-bodied males, it was an organized military force subject to rules and regulations enforced by the States. It was an instrument of State government. The use of the phrase "well regulated" in the second amendment reinforces this idea.

For example, militiamen were required to report for military service, to muster for military training several times a year. They were required to maintain certain equipment for militia service. Those requirements were enforced by the Government.

The second amendment arose from the desire of the Founders to protect these State military forces as counterpoints to the power of a Federal standing army. The anti-Federalists who sought a Bill of Rights as a restraint on Federal power had a deep distrust not only of Federal power, but also of the whole concept of a standing army of professional soldiers. They had a conviction that the Congress in the Constitution had been given too much power over the State militias, and so they addressed this concern by affirming that the keeping and bearing of arms in a well-regulated militia of the States is a right of the people, not dependent on the whim of the Federal Government. I am not arguing that the second amendment guarantees rights of the States per se and not of the people. Obviously, the right was granted to the people. The question is: What is the nature and scope of that right? What is the purpose of that right? And the original intent is clear. It was to prevent the Federal Government from passing laws which would disarm the State militia.

Well, what about the second amendment today? What is its contemporary meaning? We no longer have a citizen militia composed of a large portion of our population. That kind of universal military service proved over time to be unworkable and expensive. The States essentially abandoned the militia system. Today's version of the well-regulated militia is the National Guard. It is a military force composed not of professional soldiers, but of ordinary citizens. Laws regulating the private ownership of firearms do not adversely affect the arming of this modern militia. Gun control laws typically exempt the National Guard, which, after all, now depends on Government-supplied, not privately-owned guns. For this reason, no State or Federal gun control law has ever been struck down by the Federal courts on second amendment grounds. It has never happened.

Let me respond to some of the arguments made by the preceding witnesses. You've heard a lot about the purpose of the second amendment being not about hunting, not about recreational shooting, but about guaranteeing the right to resist tyranny, and Nazi Germany was cited as an example of the need for the right to keep and bear arms. The issue here, though, is the role of firearms in a democratic society. This is not Nazi Germany. This is a society in which the right to freedom of expression is jealously protected, and, in fact, the proliferation of firearms has proven to be a threat to democracy; the anarchy in the streets of our cities is a threat to that democracy and a strong argument for reasonable firearm control.

I wonder in that context how far Professor Cottrol and the others are willing to extend this argument that the purpose of the right

to bear arms is to resist tyranny. After all, who decides when the Government has gone too far? Is this an argument for an individual right to decide that a law passed by the U.S. Congress is so unjust that it should be resisted by force of arms? That appeared to be a great deal of the motivation behind the individual, Mr. Duran, who shot up the White House not too long ago.

It is also an invitation to the formation of private militias, which is one of the most dangerous recent developments; the notion that individuals can decide that they don't like gun control laws passed by a democratically-elected legislature and so they're going to resist them by force of arms. So let's be careful when we talk about this right being for the purpose of resisting tyranny and let's make sure it's not an invitation for people to take the law into their own hands.

Professor Malcolm's recitation of English common law history is interesting, but please understand that the right under the English Bill of Rights was never absolute. The very language of the English Bill of Rights, which talks about the right to have arms "as allowed by law," suggests that it wasn't absolute, and, of course, England has long had much more restrictive firearms laws than America. So there's no fundamental right in England that has precluded gun control laws.

I might also point out that the English Bill of Rights doesn't contain that reference to a militia. That reference is in the second amendment to our Constitution, and, as I indicated, it's not legitimate to interpret that amendment without accounting for those words.

Professor Malcolm did concede that when you look at the constitutional debates over our Constitution, you don't find a reference to the right to keep and bear arms for personal purposes. She's right. Those debates were really about the distribution of military power in the society. They confirm the consensus interpretation by the courts that what the founders were trying to do was to protect that organized military force known as the State militia.

An example is this quotation from George Mason, one of the anti-Federalists who sought a Bill of Rights: "Congress may neglect to provide for arming and disciplining the militia, and the State governments cannot do it, for Congress has an exclusive right to arm them." This is what they were talking about, too much Federal power over arming the militia and the need to guarantee that the militia is always a viable military force.

So this is not a question of contemporary ignorance or disavowal of original intent. The original intent, as expressed by the framers, simply reinforces the consensus judicial opinion as presented by Chief Justice Burger.

Finally, Professor Polsby makes some very interesting points not about the Constitution, but about gun control. There seems to be a lack of appreciation by some of these witnesses that you can distinguish between types of firearms. The facts distinguish between types of firearms. The facts show that assault weapons, although they don't account for most crime, account for a disproportionate amount of crime. That is, they represent probably less than 1 percent of the total guns in the gun population, but they represent 8 to 10 percent of those traced to criminal activity by the Bureau of

Alcohol, Tobacco and Firearms. There's a reason for that. The characteristics of these guns have a special attraction to the criminal element. If you want firepower, if you want the ability to fire scores of rounds without reloading, and do it as efficiently as possible, you buy an assault weapon. That's why the risks of those kinds of guns to the society far outweigh any conceivable benefits, and that's we must keep that ban in place. There is no constitutional issue when it comes to assault weapons.

Professor Polsby makes the interesting point that most murderers have criminal records. I can't think of a better argument for the Brady law, which this Congress had the wisdom to pass and which the National Rifle Association now tries to strike down in court.

Before the Brady law, we had a system where you could go into a gun store and buy a handgun simply by swearing that you didn't have a criminal record, and the NRA fought that law for years. And now that it's in place, in its first year, 40,000 convicted felons were stopped in retail gun stores from buying handguns because of that law. Thank goodness we didn't listen to those who said that it would violate our fundamental constitutional liberties to pass such a statute.

Mr. Chairman, guns take the lives of 103 Americans every single day in this country. Fifteen of them are children and teenagers. We at Handgun Control, Inc., believe that reducing this shameful carnage requires reasonable regulation of firearms, not just banning assault weapons, but licensing of handgun owners, registration of handgun transfers. To those who disagree with us, I say make the best case you can on policy grounds, but let's stop this pretense that there is some fundamental constitutional liberty at stake. We can no longer afford to allow the national debate over guns and violence to be dominated by a constitutional illusion.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Henigan follows:]

PREPARED STATEMENT OF DENNIS A. HENIGAN,¹ GENERAL COUNSEL, HANDGUN
CONTROL, INC., WASHINGTON, DC

Mr. Chairman and members of the Subcommittee, I am grateful for this opportunity to address the constitutional implications of gun control laws. My message is simple and unequivocal: there is no federal constitutional impediment to gun control laws. To suggest otherwise is to ignore every federal and state court ruling on the issue handed down in the last fifty years. The gun lobby's version of the Second Amendment is a myth, constructed to serve its political objectives and propagated through years of mass media advertising. Former Supreme Court Chief Justice Warren Burger, a conservative jurist and a gun owner, has called the National Rifle Association's version of the Second Amendment "a fraud on the American public."²

Proper interpretation of the Second Amendment should begin with the undeniable fact that it consists of 27 words, not 14. "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." Proponents of a broad individual rights theory have a disturbing tendency to edit out the first thirteen words or, at least, to fail to account for their presence in the text. By doing so, they construct a mythical Second Amendment that sounds very much like the unqualified individual

¹ General Counsel, Handgun Control, Inc. and Director of the Legal Action Project at the Center to Prevent Handgun Violence. Mr. Henigan is the co-author of "The Second Amendment in the Twentieth Century: Have You Seen Your Militia Lately?", 15 U. Dayton L. Rev. 5 (Fall 1989) and the author of "Arms, Anarchy and the Second Amendment," 26 Val. U. L. Rev. 107 (Fall 1991).

² Transcript, MacNeil/Lehrer Newshour, WNET New York, Dec. 16, 1991, at 13.

guarantees of the First Amendment ("Congress shall make no law...abridging the freedom of speech, or of the press..."). Of course, such creative editing of the constitutional language is totally illegitimate. If the Framers sought to create an unqualified individual right to be armed, they would have used unqualified language. They did not.

The preamble language about the necessity of a "well regulated Militia" to the "security of a free State" is central to the meaning of the Second Amendment. In its 1939 decision in United States v. Miller, 307 U.S. 174 (1939), the U.S. Supreme Court held that the "obvious purpose" of the Amendment was "to assure the continuation and render possible the effectiveness" of the state militia. The Court added that the Amendment "must be interpreted and applied with that end in view."³ Although opponents of gun control profess to see ambiguity in the Miller opinion, the lower courts see none. Since the Miller decision, over thirty federal and state court decisions have interpreted Miller to mean that the Second Amendment guarantees the people the right to be armed only in service to a "well regulated Militia." As the U.S. Court

³ Two more recent Supreme Court decisions reaffirm that the Second Amendment protects only state militias, not the private ownership of guns. In Burton v. Sills, 394 U.S. 812 (1969), the Court dismissed, for lack of a "substantial federal question," a gun owner's appeal from a New Jersey Supreme Court ruling that the Second Amendment permits regulation of firearms "so long as the regulation does not impair the active, organized militias of the states." 248 A.2d at 526. The effect of the Supreme Court's action was to uphold New Jersey's gun control law, one of the strictest in the nation. In Lewis v. United States, 445 U.S. 55 (1980) the Supreme Court ruled, in an equal protection case, that legislative restrictions on the use of firearms do not "trench upon any constitutionally protected liberties", citing Miller in support. Significantly, the Court invoked "rational basis" scrutiny to uphold the federal prohibition against ownership of firearms by convicted felons. The "rational basis" test of constitutional validity, involving great deference to the judgment of the legislature, is reserved for judicial review of legislation not affecting fundamental constitutional liberties.

of Appeals for the Eighth Circuit wrote, the courts "have analyzed the Second Amendment purely in terms of protecting state militias, rather than individual rights." United States v. Nelson, 859 F.2d 1318 (1988).

The key to understanding the Second Amendment is to decipher its mysterious reference to a "well regulated Militia." It is a phrase that is foreign to contemporary ears. Nevertheless, it had meaning, and importance, to the Founding Fathers. What is the "well regulated Militia" referred to in the Second Amendment?

The militia of the 18th century was not simply an ad hoc collection of armed citizens, as many opponents of gun control contend. Although it was composed of most able-bodied adult males, as opposed to professional soldiers, the militia functioned as an organized military force, subject to rules and regulations enforced by the states. For example, militiamen were required to muster for training several times a year, sometimes outside their home communities. The use of the term "well regulated" in the Second Amendment reinforces this idea. Consider this definition of the term "militia" from Noah Webster's An American Dictionary of the English Language (1828):

The militia of a country are the able bodied men organized into companies, regiments and brigades, with officers of all grades, and required by law to attend military exercises on certain days only, but at other times left to pursue their usual occupations.

In Chief Justice Burger's apt phrase, the militia was a "state army"⁴; it was the military instrument of state government.

The Second Amendment arose from a deep concern that the Constitution had inadequately

⁴ Warren Burger, "The Meaning, and Distortion, of the Second Amendment," The Keene Sentinel, Nov. 26, 1991, at 10.

protected the viability of state militias as a counterpoint to the power of the new federal standing army. The Anti-Federalists, who sought a Bill of Rights to place new restraints on the federal government, were particularly fearful that the new standing army, composed of professional soldiers, would become a tool of oppression. They believed that the Constitution had given Congress too much power over the state militias.⁵ In the words of George Mason, "Congress may neglect to provide for arming and disciplining the militia, and the state governments cannot do it, for Congress has an exclusive right to arm them."⁶ The Second Amendment addressed this concern by affirming that the keeping and bearing of arms in a "well regulated Militia" of the states is a "right of the people," not dependent on the whim of the federal government. The original intent of the Amendment, therefore, was to prevent the federal government from passing laws that would disarm the state militia.⁷

⁵ Power over the militia was divided between the federal government and the states in Article I, Section 8 of the Constitution. In Clauses 15 and 16, commonly known as the "Militia Clauses," Congress was given the power "to provide for organizing, arming, and disciplining, the Militia..." whereas the states reserved the power of "the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress." The Militia Clauses lend further support to the notion that the Framers understood the militia to be an instrument of governmental authority, not simply a collection of armed citizens.

⁶ 3 J. Elliott, The Debates in the Several State Conventions of the Adoption of the Federal Constitution, at 379 (1836).

⁷ This original intent frequently is distorted through the device of taking quotations of the Founding Fathers out of context. For example, advocates of the individual rights theory repeatedly quote James Madison's reference in The Federalist, #46 to "the advantage of being armed, which the Americans possess over the people of almost every other nation..." The Federalist No. 46, at 299 (Clinton Rossiter ed., 1961). Actually, that quotation appears in a passage arguing that the state militia (then composed of most male citizens) will be an effective check on the power of the federal standing army. Madison speaks of the

The significance of the Second Amendment has changed in the last 200 years, largely because of changes in the nature of the militia it was written to protect. We no longer have a citizen militia composed of a large portion of the population. Such universal military service proved unworkable and unduly expensive. Today's version of the "well regulated Militia" is the National Guard.⁸ The Guard functions as the military arm of state government, composed of ordinary citizens who are occasional soldiers.

Laws regulating the private possession or sale of guns have no effect on the arming of today's militia; such laws invariably exempt the National Guard, which itself depends on government-supplied, not privately owned, weapons. It is hardly surprising, therefore, that no state or federal gun control law has ever been struck down by the federal courts on Second Amendment grounds.

Should there be any doubt that gun control laws raise no serious Second Amendment

militia as a military force "conducted by [state] governments" by which "the militia officers are appointed...." Thus, Madison's reference to "the advantage of being armed" was to the people armed as a militia and he understood the militia to be the military instrument of state government, not simply a collection of unorganized, privately armed citizens.

⁸ In Perpich v. Department of Defense, 496 U.S. 334 (1990), a case involving state vs. federal authority under the militia clauses of the Constitution, the Supreme Court wrote that despite brief periods of federal service, state Guard members "continue to satisfy [the] description of a militia." The Court thus refused to adopt the analysis of the National Rifle Association which, in a brief amicus curiae filed in Perpich, had urged the Court to find that the National Guard is not the "militia", as that term is used in the Constitution. See also, Maryland v. United States, 381 U.S. 41 (1965) ("The National Guard is the modern Militia....").

issues, consider the courtroom record of the National Rifle Association — which promotes itself as a passionate defender of the “right to keep and bear arms.” In 1992, when the NRA was given the opportunity to ask the United States Supreme Court to review a federal circuit court ruling upholding the California assault weapon ban against the organization’s Second Amendment challenge, the organization inexplicably failed to file the necessary petition, allowing the California law to stand. Last year, although the NRA financed multiple lawsuits challenging the Brady Law, not a single one raised the Second Amendment. And most telling of all, this year the NRA filed a lawsuit against the federal assault weapon ban, again raising no Second Amendment claim. When it comes to vindicating this supposedly fundamental right, the NRA is all talk and no action. Why? Because the NRA knows that every time the arguments about the history and meaning of the Second Amendment are put before a court of law, its version of an absolute, inalienable “right to keep and bear arms” is shown to be nothing but an illusion.

Guns now take the lives of 103 Americans every day — 15 of them are children and teenagers. We at Handgun Control, Inc. believe that reducing this carnage requires reasonable regulation of firearms — including licensing of handgun owners, registration of handgun transfers, and keeping assault weapons off our streets. To those who disagree with us, I say: make the best case you can on policy grounds. But stop the pretense that a fundamental constitutional liberty is at stake. We can no longer afford to allow the national debate over guns and violence to be dominated by a constitutional illusion.

Mr. McCOLLUM. Thank you, Mr. Henigan.

I'll yield myself 5 minutes to ask a few questions. In fact, we ought to start the timer on me, I reckon, in that case.

Professor Malcolm, I'm going to turn the first question to you because I think Mr. Henigan makes one point that seems relatively indisputable, and that is that the Supreme Court in all Court decisions that I think have come down on this issue has said that the second amendment does not apply to individuals; it applies only to a well-regulated militia, a State militia. Yet, your testimony and that of Dr. Cottrol and Mr. Polsby seems to be that that's—these Court decisions are not correct. What do you say to explain why the Court's Chief Justice—former Chief Justice Burger and others in the judiciary system have made the statements that they've made in their interpretation that's so different from what you're interpreting?

Ms. MALCOLM. As I understand it, the Supreme Court has never really decided on this issue of whether the second amendment is just a right for militia or not. There have been some State court decisions, but not the Supreme Court.

As for the former Chief Justice, even being a former Chief Justice doesn't make one an expert on all our liberties, and I think there really had not been a great deal of serious examination of the original intent of this particular amendment until quite recently. So he would not have had access to, and presumably didn't know, some of the more recent scholarship about it. I'd like to say you can't just look at court opinions from the past to understand the Constitution and what the original intent is. I think you really have to look at the debates at the time, the comments that were made by the people that were debating and by the press and by others, the whole political milieu in which they were operating to understand I think that the former Chief Justice was simply wrong.

Mr. McCOLLUM. Yes, Dr. Cottrol.

Mr. COTTROL. Yes, Mr. Chairman, if I could add to that, first of all, there has never been a fully litigated—that is, both sides represented—case before the U.S. Supreme Court squarely on the second amendment. There were 19th century cases which basically involved the incorporation question: to what extent does the Bill of Rights apply to the States and to what extent does the second amendment apply to the States.

In the *United States v. Miller*, only the Federal Government was represented, and I would disagree with Mr. Henigan. I think that Court, in fact, did recognize an individual right to own militia-style weapons. However, if I may also say, nothing could be more dangerous than a kind of legal positivism that says our rights are solely defined by the state of current court doctrine. I will concede that since *Miller* modern lower courts have been hostile to the 2d amendment and have essentially tried to read that guarantee out of the Constitution, but I think we also have to remember that, for nearly 50 years, separate but equal was the extent of the equal protection clause of the 14th amendment. We also have to remember that the Supreme Court sanctioned the imprisonment of Japanese-Americans solely because of their ancestry and said that that was consonant with the equal protection principle and the due

process principle. Courts are composed of human beings, and like human beings, they have their prejudices and their blind sides. It's incredibly dangerous to simply take the current state of court doctrine and say that that is all the Constitution is and can ever be.

Mr. MCCOLLUM. Mr. Polsby.

Mr. POLSBY. We shouldn't be discussing—we shouldn't seriously be arguing the question whether the second amendment is an operative part of the Bill of Rights, and it seems to me that in decency we should defer to the unanimous view, essentially, of historians that have looked at what the Founders' intentions were rather than attempting to "Philadelphia-lawyer" our way around that issue.

This leaves us with the question of what constitutes reasonable regulation. All constitutional rights can be reasonably regulated. I disagree with Mr. Henigan that the first amendment is obviously more sweepingly phrased than the second amendment. The first amendment protects, for example, "the freedom of speech." It doesn't protect "speech." Well, what is "the freedom of speech?" Aha, that gives us an opportunity to "Philadelphia-lawyer" our way around anybody having the freedom to speak, if we choose to do so.

But it is an obligation, it seems to me, of public officials that are sworn to uphold the Constitution to approach and legislate these questions with respect to these questions in a nontendentious, constructive light. And let me also add, Mr. McCollum, Mr. Chairman, this Congress does have the power under the 14th amendment to offer judicially-binding interpretations of the Bill of Rights.

Mr. MCCOLLUM. Well, I can see that I could ask a lot of questions and elicit long answers; all of us could, but I'm going to abide at least in the first round—we may or may not have time for a second round, depending on how long it takes. And I will yield, then, to the gentleman from Virginia, Mr. Scott, if you have questions you'd like to ask for 5 minutes.

Mr. SCOTT. Thank you.

Just very briefly, Mr. Chairman, the statement has been made that the Supreme Court hasn't ruled on this issue. Let me just read portions of a couple of cases, and then ask at least the lawyer members of the panel to comment.

Lewis v. United States, 1980, "These legislative restrictions on the use of firearms are neither based on constitutionally-suspect criteria, nor do they trench upon any constitutionally-protected liberties. The second amendment guarantees no right to keep and bear a firearm that does not have some reasonable relationship to the preservation of efficiency of a well-regulated militia."

U.S. v. Hale, a circuit, eighth circuit case, 1992, "The purpose of the second amendment is to restrain the Federal Government from regulating the possession of arms where such regulation would interfere with the preservation or efficiency of the militia."

And *Burton v. Sills*, a New Jersey Supreme Court case where the appeal was dismissed in the Supreme Court, 1969, "As the language of the U.S. Constitution second amendment itself indicates, it was not framed with individual rights in mind. Thus, it refers to the collective right of the people to keep and bear arms in connection with a well-regulated militia. Most agree this term must be taken to mean the active organized militia of each State, which

today is characterized as the State National Guard. Reasonable gun control legislation is clearly within the police power of the State and must be accepted by the individual, though it may impose a restraint or burden on him."

My question is whether or not there are any Supreme Court cases or other cases that take issue with the idea in these cases that the collective right is what we're talking about, not the individual right?

Mr. COTTROL. If I might start, Congressman, as I under—if I recall *Burton v. Sills* correctly, the language you're quoting is from the New Jersey Supreme Court, which is affirmed by the U.S. Supreme Court, not in—my statement was there's never been a fully-litigated case on the central issue of the second amendment before—

Mr. SCOTT. But do you have any cases? I mean, these seem to be on one side. Do you have anything on the other side—

Mr. COTTROL. Well, sir, if I asked you in 1950, were there any cases that contradicted the separate but equal principle or that stated that the 14th amendment's equal protection clause prohibited segregation, would you have been able to give me any?

Mr. SCOTT. Well, my—so the state of the law, according to the interpretations of the Supreme Court at this time, are clearly on the gun control side of the argument?

Mr. COTTROL. No, I would disagree with that. It seems to me that the last statement that was made by the Supreme Court squarely addressing that issue is *Miller*, which is 1939, and my reading of *Miller* is that they were making a distinction between weapons which are useful for militia purposes and a sawed-off shotgun, which they didn't take judicial notice as having that kind of purpose.

Mr. HENIGAN. Mr. Scott, might I comment on that? First of all, you pointed to the *Lewis* case. It's an extremely important case. It was fully litigated. It was an equal protection case in which the Court held that restrictions on firearms should be assessed under the equal protection doctrine with rational basis scrutiny, which is a low level of scrutiny by courts of legislation that courts do not use when there is a fundamental right involved. So what *Lewis* says is that the right to bear arms is not a fundamental right, and, in fact, you quoted the very phrase from that opinion that stands for that proposition.

Mr. Cottrol's mystery about the *Miller* opinion is curious. He may be confused about what *Miller* means; the lower courts are not. There are over 30 Federal and State court decisions interpreting the *Miller* decision, and they all say the same thing, which is the second amendment guarantees the people's right to be armed only in service to a well-regulated militia. *Miller* does not mean that the possession of a military weapon by anyone is constitutionally protected, which is what Mr. Cottrol would have you believe. Imagine if that is what the Court meant in *Miller*. It would mean that all of us would have a constitutional right to possess machineguns, as the NRA has, indeed, contended, bazookas, handgrenades, nuclear weapons. Where does it end? Surely, we've got to give the Supreme Court more credit than that. That's not what it meant.

Mr. MCCOLLUM. Mr. Scott, your time is up, and I know that others want to comment on it and rebut it, but we've got other questioners, and, Dr. Cottrol, I'm sure you'll have a chance to respond.

Mr. Schiff?

Mr. SCHIFF. Thank you, Mr. Chairman.

You said at the conclusion of your testimony words to the effect, let's set aside the debate on the second amendment and look at policy decisions in terms of firearms legislation. While recognizing there is the constitutional debate going on, I would like to invite you to discuss policy with me for a moment here. The Brady Act, which Handgun Control, which you represent—I mention them because your statement is on their stationery, I see—strongly supports. It's my understanding that the Brady Act has been found unconstitutional in several district courts where it has been challenged not under the 2d amendment, but under the 10th amendment, States' rights. And it's been found unconstitutional on the grounds that the way it was written was essentially Congress saying it's a wonderful idea to have a 5-day waiting period and a background check on those seeking to buy handguns at retail establishments. You, the localities, are required by our legislation to do it, and you're required to do it at your own expense. And that is what has been held unconstitutional.

The one case where it is still at issue, I've been shown a copy of the Justice Department brief, and the Justice Department brief seeks to escape that result by arguing that the Brady bill really isn't mandatory on local government, which is the exact reverse of, of course, what they told Congress.

Now I'd like to say as a policy matter, even if we agree with the idea that it would be productive for law enforcement to have a background check, by setting it up to require the States to do it and localities to do as an unfunded mandate, isn't that a policy error? Shouldn't we—shouldn't Congress—say a Federal agency should do the check. Shouldn't Congress at least say the Federal Government will pay for it?

Mr. HENIGAN. The important policy point, of course, is that when Brady was passed there was no viable way to do systematic background checks at the Federal level. We didn't have the degree of computerization of criminal records that would make it possible to do some kind of instantaneous background check. The records were at the local level, and many of them had to be searched manually, and still do. That's why the 5-day waiting period is so important, and that is why it is important that local officials be involved in doing the background checks.

Mr. SCHIFF. Could I ask you a question? Why—true, records have to be searched by hand, and then a lot of telephoning has to be done when you use an FBI rapsheet to determine whether an arrest was a conviction anywhere in the country. Couldn't Federal officials do that just as easily?

Mr. HENIGAN. It was the judgment of Congress—and I think it was a very wise judgment—that local officials are in the best position to do the checks as of the present time because they're more likely to know the people who are wanting to buy the handguns; they have access, better access, to the local records, and they also have access to Federal records.

Mr. SCHIFF. Even——

Mr. HENIGAN. Moreover, most—many of the most vehement supporters of Brady were local law enforcement officials who said to this Congress: “We want the power to do these checks. We are the right people to do them. It’s important to the safety of our communities that we do them.” And they told this Congress to pass that bill for that reason.

Mr. SCHIFF. But it’s local law enforcement officers that brought the constitutional challenges.

Mr. HENIGAN. Well, I would venture to guess, Mr. Schiff, that that represents a very small minority of local law enforcement officers. These were sheriffs who have very strong views against gun control laws. They were basic—these law suits are not funded by the localities themselves. They’re being funded by the National Rifle Association. They’ve admitted that. So this is not at all an expression of opposition by local law enforcement to doing these background checks. Local law enforcement was telling this Congress for 7 years: give us the power to do these background checks.

Mr. SCHIFF. I assume the Federal judges who have found the Brady Act unconstitutional are not funded by the National Rifle Association?

Mr. HENIGAN. Well, let me comment on that, Mr. Schiff. I believe that, ultimately, the view that is going to prevail in the Federal courts is that the mandatory background check provision is consistent with the 10th amendment. One Federal judge did hold that, and various cases are now on appeal. So the final chapter hasn’t been written on that.

Mr. SCHIFF. Are you aware that this——

Mr. HENIGAN. Let me also add, isn’t it interesting that when the NRA decided to go court to challenge the Brady Act, they didn’t challenge the waiting period as a violation of the second amendment. They recruited these sheriffs to bring these lawsuits against the mandatory background check provision when we all thought that the NRA was in favor of background checks.

Mr. SCHIFF. One quick followup question——

Mr. HENIGAN. Now what better——

Mr. SCHIFF. I have to reclaim the time because I’m out——

Mr. HENIGAN. I’m sorry.

Mr. SCHIFF [continuing]. But one quick question: Are you aware the Justice Department, as I understand it, filed a brief that said the act is not mandatory on local law enforcement? Are you aware of——

Mr. HENIGAN. Actually, I would disagree with your interpretation of their position.

Mr. SCHIFF. OK.

Mr. HENIGAN. That is not their position. Their position is the check is mandatory, but there is a great deal of discretion given local law enforcement as to the contours of each check, given each handgun purchaser. What is required is a reasonable effort. The Brady bill was designed to give a great deal of discretion to local law enforcement, so that this wouldn’t be unduly burdensome, and most local law enforcement doesn’t believe it is.

Mr. SCHIFF. Thank you, Mr. Henigan.

Mr. MCCOLLUM. Mr. Schiff, your time has expired.

The gentleman from Michigan has reminded me that he is an ex-officio member of all the subcommittees as the ranking minority member of the full committee, which is true, and I'm going to recognize him, but I want to be sure everybody understands, as a general policy matter, other members of the full committee will be able to sit in on our panels, but will not be able to question until the full slate of our subcommittee has finished their questions. However, he's correct, and I believe if the chairman sat in here, he'd have the same right, if Mr. Hyde did. So I yield 5 minutes to the distinguished gentleman from Michigan.

Mr. CONYERS. Well, I'm glad that you're observing the rules of the committee, Mr. Chairman. I appreciate this time.

Also, comity might suggest that, with only Bobby Scott here on this side and about six other members on that side, it would make for a little bit more balanced discussion, unlike the makeup of the witness list here.

But let me just say, Mr. Henigan, you've helped bring the balance here more than your numbers today. I would have liked to have seen two people on that side and two on this, but, hey—

Mr. HENIGAN. So would I. It's a little lonely down here.

Mr. CONYERS [continuing]. That's the prerogatives of the majority.

But let just raise a couple of questions here in the few minutes that I have. The first thing is that the whole idea to make an application for a gun an unfunded mandate, a cost that States shouldn't be forced to bear, sort of borders on the ludicrous. Here we're trying to figure out ways to keep more civilians alive, and we're talking about who's going to pay for it, something like the Voter Rights Act, the motor/voter law. Let's register more people to vote; the States say, "Wait a minute. Who's going to pay for putting more applications in the employment security offices or public places? If you're not going to pay for it, then we don't care if our people get access to the polls or not."

It's a kind of petty argument really. Here we have the society really being challenged by a tremendous influx of weapons, and then I have my brothers and distinguished members of the bar—they didn't say it out here today, but I've been reading, Dr. Cottrol, where black people need to keep guns because, hey, we're going to need our right to guns before this thing is over, without ever observing who the gun victims are in this country, an incredible argument that goes on within the African-American community.

And our distinguished historian, wonderful, and it was very interesting, but, ma'am, has anybody else ever researched the important work that you've contributed to this hearing before? Might not any other courts or judges or clerks or other historians ever taken a look at the same thing that you did? I mean, I'm sure much of your work is original, but somebody must have thought about this, or maybe they haven't, and that's why I ask the question.

Let me begin with Mr. Henigan's responses, and then Dr. Cottrol, and then the professor. Do you have any comments, Mr. Henigan?

Mr. HENIGAN. Congressman, I think you said it far more eloquently than I ever could. This debate isn't about whether to ban

all guns. My organization doesn't believe in banning all guns or banning handguns. It's a debate about whether part of our strategy against guns and violence must include reasonable regulation of firearms, and there is a cost—there is a cost to this constitutional distortion that's going on. It is that it persuades people that somehow regulation of the most dangerous consumer product we know of, guns, involves some kind of fundamental constitutional issue, creates a presumption against reasonable regulation that is absolutely devoid of legal reality. And it's got to stop.

As I said in my statement, this debate has to focus on the dimensions of the problem and what is likely to effectively deal with it, and let's stop this nonsense about some fundamental second amendment right that is abridged by a ban on military-style assault weapons.

You know, the best indication that this is an insignificant legal debate is the NRA's own litigation record, because when they went to court to challenge the Federal assault weapon ban recently, they filed a lawsuit that doesn't make one mention of the second amendment. Here the great, passionate defender of second amendment rights will not even seek to vindicate those rights in court. And why? Because they know they would lose. They know their position is totally devoid of legal validity. So let's stop this pretense and let's talk about how to stop the killing.

Mr. CONYERS. Mr. Cottrol or your associate?

Mr. JOHNSON. Yes.

Mr. CONYERS. Tell me your name again, sir.

Mr. JOHNSON. My name is Nicholas Johnson. I'm an associate professor of law at Fordham Law School in New York.

I have a number of responses, but I will cut them short. In response to Mr. Henigan's argument that the HCI organization is not interested in banning all guns and that regulation is reasonable, I want to try and just very quickly suggest to you what the sticking point is. The sticking point is the bad gun formula of regulation. As Mr. Cottrol already explained, there is no limiting principle that stops us from spinning out the definition of bad guns, and I can't believe that any one of us here sincerely is more concerned about deaths from particular types of firearms than they are from other types of firearms that we think are good guns. Therefore, absent some limiting principle on the ability to spin out the definition, we are at impasse.

Now the second amendment is, in fact, that barrier. The trivialization of the second amendment, particularly by Mr. Henigan's organization and by Warren Burger as well, would, in fact, eliminate what is the only serious barrier to the continuing expansion of the definition of bad guns, and that is why, frankly, individuals who are hunters, individuals who think that because they live in rural areas that dependency on the police is not sensible stand up and say, listen, this worries me and I cannot join with you to talk about ways to make things more difficult for criminals.

Mr. CONYERS. Do you have any idea how many thousands of times we have pled that we have nothing against hunters, sportsmen, collectors? I mean, every time we bring the subject up we assure people repeatedly that that's not what we want to do.

Mr. JOHNSON. Representative, I trust you, but I don't the person who comes after you.

Mr. SCHIFF [presiding]. I have to ask for a very brief, a very brief—I have to ask for a very brief response at this time.

Mr. JOHNSON. I can trust you, but I may not be willing to trust the person that comes after you.

And, lastly, if we get to the result that people like me fear from the bad gun formula, it creates a state of dependency that is a very, very sad thing, particularly for minority communities that have a reason to, in fact, distrust the State. It's Federal legislation, but it is dependency on State and local governments, and we have historically been very, very legitimately distrustful of State and local enforcement of our individual rights.

Mr. SCHIFF. The gentleman from Michigan's time has expired.

Mr. CONYERS. May I point out to the chairman that the professor had not had a chance to respond, sir?

Mr. SCHIFF. I will extend the gentleman another 2 minutes to allow the professor to respond, allow the gentleman from Michigan to finish that 2 minutes.

Mr. CONYERS. It wasn't a requirement for additional time. It was just that the question had been lodged within the 5 minutes, sir.

Mr. SCHIFF. All right, Professor Cottrol, if you desire to respond, please do so.

Mr. COTTRILL. Yes, I feel like there's so many things—

Mr. CONYERS. No, it's not—it was the professor, not—Professor Malcolm, excuse me.

Ms. MALCOLM. It's the historian.

Mr. CONYERS. The historian, not the lawyer.

Ms. MALCOLM. Right.

Mr. SCHIFF. I'm sorry. OK. Well, let me just say I think we have previously, where a member asked the question at the end of the 5 minutes, and even then some, we allowed each member of the panel to respond. So let me—allow me to do that.

Professor Malcolm.

Ms. MALCOLM. I'll be very brief, but I appreciate the opportunity to respond.

First of all, there really has not been very much research done, surprising as that may seem. Much of what was done earlier was done by attorneys who were arguing from a particular point of view, rather than a historian who was just looking at the origins of the right. The fact is that mine was the first book that really looked seriously at the origins and did thorough research on it.

But it also goes back to your comment about how lopsided our panel is because, if there were historians on the other side, they would be here. There are a lot of historians who agree with me now—

Mr. CONYERS. Why do you think that?

Ms. MALCOLM. Because it is very hard, sir, to find a historian who now believes that it is only a collective right; that as it has become more thoroughly researched, there is a general consensus that, in fact, it is an individual right. That's why this is so lopsided. There's no one for me to argue against anymore. They have to bring in the director of Handgun Control to simply tell us what his belief is.

Mr. SCHIFF. Mr. Henigan.

Mr. HENIGAN. Yes, let me make a brief comment. There's an advertisement that's blown up over here that appeared in Roll Call this week. It was an advertisement put in there by my organization. It contains the names of 28 professors of constitutional law who are saying that the history and meaning of the second amendment support the judicial consensus that I have described. So this panel is not at all representative of constitutional historians or scholars.

Mr. POLSBY. Sir, could I just put in—

Mr. SCHIFF. Go ahead, please.

Mr. POLSBY. Several of those signatories are my colleagues. They are not professors of constitutional law in point of fact. They're professors of anything but. Not one person who is a signatory of that advertisement, sir, has ever published research on the subject of the second amendment—zero.

Now I'm not here representing the NRA, and it's difficult to become the foil of, or to be made the foil of, the argument in that way. We are independent scholars. I don't believe that Professor Malcolm is a member of the NRA. We can't—I'm not representing their views here, but it is simply not the case that there exists at present a legal historian or a historian of constitutional history that is prepared to defend the proposition that the second amendment is a triviality, is obsolete, does not grant an individual right, and this runs right across the political spectrum, Republicans and Democrats, even one old-fashioned pacifist. So just to correct what is evidently your misimpression, Professor Malcolm's statement here, to my knowledge, is essentially true, and those professors, with some exceptions but most of them, are not professors of constitutional law.

Mr. SCHIFF. Mr. Henigan, I'll allow your response, but brief, please.

Mr. HENIGAN. That's very kind, Mr. Chairman.

The record should not reflect that there is not a single constitutional historian who would endorse the militia interpretation of the Constitution, simply because there are not a lot of law review articles supporting that interpretation. There are some, but it is very easy to explain why there aren't more, and that is this is such a settled issue of constitutional law. It is uninteresting to most constitutional law professors. You don't get it when you take constitutional law. They don't even teach it. It is simply established that this is the meaning of the second amendment, and that explains the fact that there aren't more—more of these people haven't written on it, but they certainly believe what they endorse in the ad.

Mr. SCHIFF. The Chair has received a request. I'm going to move on to other members and allow them to join the questioning. You'll have more of an opportunity to answer. But I believe the Chair has received a request to hold the record open for a period of 10 days, I would suggest, to allow other individuals who might be expert in this issue to submit written testimony.

Mr. CONYERS. Mr. Chairman—

Mr. SCHIFF. The gentleman from Michigan.

Mr. CONYERS. Not 10 days. It might—I don't want to keep—some reasonable period of time, but we wanted to make sure that the

record also reflected that we on the Democratic side have asked for additional witnesses and were denied, and perhaps the professor might understand that it wasn't because we couldn't find anybody.

Mr. SCHIFF. Well, the record will remain open and it will be most welcome additional testimony.

Mr. CONYERS. I thank the Chair.

Mr. SCHIFF. I thank the gentleman from Michigan.

Mr. Buyer.

Mr. BUYER. Thank you, Mr. Chairman. I do want to clarify this real quickly, and we can do it real quick.

Dr. Cottrol, who pays your salary?

Mr. COTTROL. Rutgers Law School.

Mr. BUYER. Dr. Malcolm, who pays your salary?

Ms. MALCOLM. Bentley College.

Mr. BUYER. Dr. Polsby, who pays your salary?

Mr. POLSBY. I'm still not a doctor, Mr. Buyer, but a professor of law at Northwestern University.

Mr. BUYER. I said, Dr. Polsby, who pays your salary?

Mr. POLSBY. It's just "Mr."

Mr. BUYER. Oh, it's "Mr.?" They've got "Dr." there.

Mr. POLSBY. I know they do; it's in error, but I never did go to dental school.

Mr. BUYER. Shall I call you "Dr." or "Mr. Henigan?" Mr. Henigan, who pays your salary?

Mr. HENIGAN. I'm "Mr.," I'm afraid.

Mr. BUYER. Who pays your salary?

Mr. HENIGAN. My salary is paid by Handgun Control, Inc., and the Center to Prevent Handgun Violence.

Mr. BUYER. And the Center to Prevent Handgun Violence?

Mr. HENIGAN. Right.

Mr. BUYER. Well, I think it's pretty clear here. So the three professors are not paid by the NRA, are you not? None of you are?

Mr. POLSBY. No.

Mr. BUYER. Nor the gentleman on the end?

Mr. JOHNSON. No.

Mr. BUYER. And who pays your salary, sir?

Mr. JOHNSON. Fordham University School of Law.

Mr. BUYER. You know, I think it's pretty clear that we've got some paid advocacies here. We have the paid expert testimony, I guess is what I would say with regard to Mr. Henigan. So I'll accept it under the color and flavor for which it is presented and under the jaundiced view of how it's presented.

You caught my attention, sir, when you mentioned that, thank God for the Brady bill for it saved 40,000 felons from getting handguns. Would you, please, now clarify your testimony and say to this committee how many of that 40,000 were prosecuted?

Mr. HENIGAN. Well, it certainly wasn't 40,000.

Mr. BUYER. Ten.

Mr. HENIGAN. Mr. Buyer—

Mr. BUYER. Ten.

Mr. HENIGAN [continuing]. I wish it had been more.

Mr. BUYER. Ten.

Mr. HENIGAN. I wish it had been—

Mr. BUYER. So I just wanted to let you know, when you say these exaggeration things, it begins to affect what's called credibility.

Mr. HENIGAN. My—my—

Mr. BUYER. Then—then it's pointed out that you bragged about an advertisement about all your professors here, and then it comes out that Dr. Cottrol says none of them have been—that any—none, zero writings on the second amendment. It begins to affect your credibility.

Mr. HENIGAN. Does that mean that they're not qualified to have voiced an opinion—

Mr. BUYER. I'm just—sir, what I'm saying is, it affects your credibility—

Mr. HENIGAN [continuing]. Because they have an opinion on it—

Mr. BUYER. Well, if you want to quibble, we can quibble. What I'm saying here, it affects the credibility of your testimony.

So let me ask you this—

Mr. HENIGAN. My testimony was not false or misleading in any way—

Mr. BUYER. When you said the issue is how to stop the killing, I agree with you; that's what the real issue is: how do we stop the killing? You see, when I got upset was in the last crime bill with those that buy into the notion that gun control is crime control. And what bothers me most, and as a former prosecutor what bothered me a lot, is that notion because I submit to you, sir, I'll put a screwdriver on the table there in front of you, and I'll put a handgun, which you want to ban, on the table, and you tell me which is the defensive weapon and which is the assault weapon. Can you tell me which, the screwdriver or the handgun? Can you tell me?

Mr. HENIGAN. It's very difficult for me to—

Mr. BUYER. That's right; it's difficult for you to tell.

Mr. HENIGAN. It would be difficult—

Mr. BUYER. If I picked up—

Mr. HENIGAN. Could I please answer the question, Mr. Chairman?

Mr. BUYER. If I picked up the screwdriver—if I picked up the screwdriver and moved toward you with the intent to hurt you, maim you, kill you, and you picked up the gun, all of a sudden, that handgun which you tell Americans is an assault weapon isn't the assault weapon; it becomes a defensive weapon, and the screwdriver, which looked harmless, now becomes a weapon. So the real assault weapon isn't the gun or the screwdriver; it's the thug. So what we ought to be going after is the thug in our society, not the particular gun.

See, what I wanted to do do, when you say, "Sir, how do we stop the killing," it's—we're going to take up that issue pretty soon in this committee, and that is increasing the penalties for the use of a firearm in the commission of a crime. And I wish we had more prosecutors out there and more U.S. attorneys that use the statutes and slam-dunk these guys behind bars.

Mr. CONYERS. Mr. Chairman, can the gentleman be given additional time?

Mr. BUYER. Oh, I'd love to. I'd appreciate that.

Mr. SCHIFF. The gentleman's time has not yet expired.

Mr. BUYER. Let me ask Mr. Polsby a question. Sir, you—there was a comment that was made about the—Mr. Henigan made reference about the tyranny, about the individual right to bear arms—something that was a sarcasm—“Surely in our society we shouldn’t give right to individuals to raise up their arms against the country, no different than Mr. Duran did at the White House,” or something like that. I’m sure you have a comment on—

Mr. POLSBY. I take it, Mr. Buyer, that Mr. Henigan—Mr. Henigan’s point reconstructed is something like this: in a democratic society people should not be given a unilateral power to oppose democratic decisions. It’s a serious point. It’s one that, in effect, argues with the premise of the Bill of Rights. It certainly is one that is tendentious with respect to the second amendment as it was conceived of by the drafters.

Mr. Henigan and I, I think, have common ground on the proposition that reasonable regulation of firearms is permissible under the Constitution, but what is reasonable and what is not reasonable is a factual issue and one not in any way likely to be advanced by quoting numbers like 40,000—

Mr. BUYER. Right.

Mr. POLSBY [continuing]. Felons prevented from buying handguns, that sort of thing. That’s just propaganda.

Mr. BUYER. Right. Thank you.

Mr. SCHIFF. Mr. Henigan, I believe you wanted to respond also, sir?

Mr. HENIGAN. Thank you. I’d like to respond to some of Mr. Buyer’s comments.

First of all, not all handguns are assault weapons. Second, the comparison between a screwdriver and a handgun makes a very important point. It would be, as I was about to say, very difficult for me to kill you with a screwdriver from here to there. It would be easy for me to do it with a handgun. Handguns are designed to kill. They do it very efficiently, and that is a very good policy reason why there ought to be different rules and regulations with respect to handguns.

Mr. BUYER. The point is an assault weapon is based on the intent of the user.

Mr. HENIGAN. Not at all.

Mr. BUYER. It could be a tire iron.

Mr. HENIGAN. Not at all—

Mr. BUYER. I could kill you with a tire iron or a—

Mr. HENIGAN. It’s based on the concept of fire power. The fact that you can kill a lot of people very quickly with an assault weapon, that’s what it was designed to do, and that’s why it was totally rational for this Congress to distinguish those kinds of guns for special treatment. And we hope and pray that this Congress will maintain that statute in effect—

Mr. BUYER. Thank you, Mr. Chairman.

Mr. HENIGAN [continuing]. Because it’s very important to the public safety.

Mr. COTTRILL. Mr. Chairman. Mr. Chairman.

Mr. SCHIFF. Who’s seeking recognition?

Mr. COTTRILL. Here, sir.

Mr. SCHIFF. I’m sorry. Oh, over—

Mr. COTTROL. Yes.

Mr. SCHIFF. I was looking for my colleagues. Mr. Cottrol, briefly, if you would—

Mr. COTTROL. Very briefly. Mr. Henigan mentions the issue of firepower with respect to an assault weapon. The weapons that were banned by last year's statute are semiautomatic weapons and they all fire at the same rate. Let me give you one example.

One weapon is specifically—one firearm, one rifle, is specifically protected by last year's legislation, the Ruger Mini-14. One other rifle is specifically banned, the Colt AR-15. Both fire the same cartridge, the 223 cartridge. Both will take detachable box magazines ranging from 5 to 30 rounds. Indeed, there is a magazine which is built to fit into both of them. Both have the same rate of fire. What are the differences? The Colt AR-15 has a bayonet lug and a pistol grip. The Ruger Mini-14 has no bayonet lug and has no pistol grip. Why is one specifically protected by the legislation and the other specifically banned? I am not afraid of pistol grips, and as my sergeant told me in basic training, if you have to use the bayonet, you're too close. [Laughter.]

Mr. SCHIFF. Thank you, Dr. Cottrol. On that, I have to interrupt, sir, so we can move on.

Mr. Heineman.

Mr. HEINEMAN. I wasn't here during the presentation, Mr. Chairman. I'll pass.

Mr. SCHIFF. Thank you, Mr. Heineman.

Mr. Bryant.

Mr. BRYANT of Tennessee. Thank you, Mr. Chairman.

Mr. Henigan, I have a question for you also. I think you've done a good job articulating the position that you represent. However, I must respectfully disagree with you on that. I believe that the second amendment to our Constitution does provide for more than just a well-equipped militia, but it allows by constitutional amendment a person to—an individual to possess a firearm for self-defense, for hunting, for target practice, and whatever. But as I hear what you're saying and as I read your report, you say that the intent of the amendment is to prevent the Federal Government from passing laws that would disarm the State militia, and you said in your testimony—and I wrote it down—that it was limited to a well-regulated militia. And, again, I must respectfully disagree with you on that.

You quote some numbers in here and with your testimony, that every day 103 people are killed, and then you said that roughly 1 percent, or maybe 8 to 10 percent, of these are related to these assault weapons that have been banned.

Mr. HENIGAN. I said that approximately 8 to 10 percent of the guns traced to criminal activity by the Bureau of Alcohol, Tobacco and Firearms are assault weapons.

Mr. BRYANT of Tennessee. OK. I've heard other figures from law enforcement that about 1 percent of the homicides nationally are caused by these types of weapons that are banned.

Mr. HENIGAN. Yes, they're—

Mr. BRYANT of Tennessee. If you're killing 103 people a day and we're trying to ban the guns that kill 1 percent of those of about 100, why are we quibbling about that? Why are you out there—if

you're sincere in your beliefs, why aren't you out there trying to take all the handguns that kill the other 99 percent of the people out there every day, the 100, the other 102 people every day that are killed? If you're really sincere and you truly believe that the second amendment is limited only to a well-regulated militia, why are we talking about simply semiautomatic weapons? Why don't you take away all of the handguns?

Mr. HENIGAN. Because we don't think that's necessary and—

Mr. BRYANT of Tennessee. Well, we're killing 99 percent of the people with them; why isn't it necessary under your logic?

Mr. HENIGAN. We believe that the handgun problem can be brought under control by a system which is comparable to the regulation of automobiles; that is, we ought to license handgun owners and we ought to register handgun transfers. The Brady bill was an enormous step forward. It stopped the sale of handguns by the retailer to the convicted felon. The problem is now you can have private transactions between people who are not licensed dealers and convicted felons. We've got to close that loophole. That's just a reasonable regulation, and it would help keep—

Mr. BRYANT of Tennessee. I think you folks are quibbling over this when you're talking about the guns that kill 1 percent and not doing anything about the ones that kill 99 percent. I think, ultimately—

Mr. HENIGAN. We are prepared to do a lot about the handguns.

Mr. BRYANT of Tennessee. Well, no, I think the real reason is your logic fails there. Your logic fails. You cannot distinguish between semiautomatic weapons and the regular handguns that, by figures, kill 99 people a day.

Mr. HENIGAN. The distinction has been drawn by all the police organizations that have supported an assault weapon ban, and that is that you can make an argument that there are legitimate uses for ordinary handguns. You cannot make that argument about assault weapons.

Mr. BRYANT of Tennessee. But how do you square that, though, with your interpretation that under the second amendment you only have a right if you're in a well-regulated militia to have a gun?

Mr. HENIGAN. Mr. Bryant, the constitutional point is not that banning handguns is a good idea. The constitutional point is that this Congress has the constitutional power to do it, if it wants to. We don't ask you to do it. We don't favor that step, but the constitutional point is you do have that power. This is not a constitutional issue. It is a question about what the dimensions of the problem are and what the best steps are to alleviate the problem. And we will—we can have a discussion about whether licensing and registration of handguns would help to deal with this terrible problem of violence, but let's leave out this notion that there is a fundamental constitutional right—

Mr. BRYANT of Tennessee. If you had one law, if you could pass one law through this Congress dealing with guns, what would that law be?

Mr. HENIGAN. The law has become known as Brady II.

Mr. BRYANT of Tennessee. What is that?

Mr. HENIGAN. It would be a comprehensive reform of Federal firearms laws and its core is a system of licensing and registration very similar to what we have with respect to automobiles. That ought to—there are other aspects to Brady II, but the point is some kind of rational control of the distribution of these very dangerous guns. We don't have to move to a total—

Mr. BRYANT of Tennessee. One quick question, how do you square that type of regulation of guns with those who say that we need to keep our firearms against a tyrannical government?

Mr. HENIGAN. Well, as I mentioned in response to another question, the best response to the prospect of tyrannical government is to perfect the democratic institutions that we have in this country, to zealously protect freedom of expression, the independence of the Federal judiciary in enforcing rights, the separation of powers, the power to vote, and get that power to vote distributed to as many citizens as possible. It's these democratic institutions that insure against tyranny. We cannot take the step of interpreting our Constitution to give each and every one of us the right to choose what laws to obey, and if we disagree, to start shooting.

Mr. BRYANT of Tennessee. If I might reclaim my time, our forefathers had those very same thoughts as they set up the separation of powers under our Constitution and our democracy, but, yet, they still saw fit to add this second amendment to give the people the right to possess those weapons.

Mr. HENIGAN. But I—

Mr. BRYANT of Tennessee. And I submit to you it's that logic against a tyrannical government—

Mr. SCHIFF. The gentleman's time has expired.

Mr. BRYANT of Tennessee. But we just have to disagree, I guess.

Mr. SCHIFF. Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman.

Mr. Henigan, you certainly, I would hope, would not view it as against public policy or improper in any way for an organization that represents a grassroots group of citizens who believe in a particular point of view should not be able to participate in challenging laws or filing amicus or other sorts of briefs with courts—

Mr. HENIGAN. Not at all.

Mr. BARR [continuing]. On behalf of the points of view of their members, would you?

Mr. HENIGAN. Not at all. In fact, we have invited the National Rifle Association—

Mr. BARR. Well, HCI files such briefs and participates, too, don't they?

Mr. HENIGAN. Pardon me?

Mr. BARR. HCI, Inc., or Handgun Control, Inc., participates in court cases, files amicus briefs, and the whole range of participation in court cases involving—

Mr. HENIGAN. We certainly do.

Mr. BARR [continuing]. Certain firearms, don't they?

Mr. HENIGAN. We certainly do, and we do not begrudge the—

Mr. BARR. So you certainly didn't mean to earlier cast any aspersions or say there's anything wrong with the National Rifle Association participating in cases such as challenge to the Brady laws, would you?

Mr. HENIGAN. No, not at all.

Mr. BARR. OK. Well, then forgive me, but I thought you had implied that there was something wrong with that.

Mr. HENIGAN. There's nothing wrong with it.

Mr. BARR. OK.

Mr. HENIGAN. I was just commenting that it is curious that when they go to court to challenge gun control laws, they leave the second amendment outside the courthouse door.

Mr. BARR. Well, it is—it is kind of interesting what people leave out. And along those lines, I was rather intrigued by some of the material that you left out of your paper, and your paper is very well reasoned based on the sources that you cite. It's very eloquent, and it represents a certain point of view. When other organizations similarly wish to present a point of view, based on their research, based on their interpretation of the law, based on the views of their members, as an advocate, isn't their job to present their argument based on their sources in the best light, the most favorable light for their argument, as you have done? Is that not accurate?

Mr. HENIGAN. Of course.

Mr. BARR. OK.

Mr. HENIGAN. We don't begrudge them—

Mr. BARR. It—I did notice, though, and I was wondering if you could address this: some of the material you left out were references to what I think were some very explicit references to the meaning of the second amendment by some of the Federalists in some of the Federalist Papers. Also, I didn't see any reference at all to two other important amendments to our Constitution, the 9th and the 10th. I know you cited George Mason in yours, but I'm talking about some of the other documents that explicitly address it. You also didn't mention the 9th or 10th amendments. Do you think that they're relevant at all or completely irrelevant to a discussion of whether or not there is enjoyed by the citizens of the United States a very fundamental right to self-protection?

Mr. HENIGAN. I believe that those amendments are generally considered by the courts to be irrelevant to that. To the extent that there is a right to keep and bear arms, it is clearly addressed by the second amendment and it is so limited.

Mr. BARR. Are the only rights that the people enjoy in this country those that are explicitly reference somewhere in the constitutional document itself?

Mr. HENIGAN. That has been the holding of the Supreme Court for many years.

Mr. BARR. Mr. Henigan, now come on. Let's—I mean, the basic tenet of our Constitution is that it does not represent the full panoply of rights enjoyed by the people of this country. As a matter of fact, doesn't the 9th and 10th amendments explicitly say that?

Mr. HENIGAN. Mr. Barr, that point of view has never been accepted by the Supreme Court. The—

Mr. BARR. No, no, no, no, I did not preface my question speaking just about the second amendment—

Mr. HENIGAN. I understand, but what I'm saying is that the Supreme Court has long held that the existence of a right must be tethered to some language in the Bill of Rights, that—

Mr. BARR. Mr. Henigan, I—

Mr. HENIGAN [continuing]. Instead of making up rights that are not somehow expressed in the Bill of Rights.

Mr. BARR. You just—I was going to give you some credit, but I'm not now. I mean, that is the most absurd and most pinched and most unrealistic and most inaccurate view of our Constitution that I have ever heard.

Mr. HENIGAN. Well, perhaps you could give me an example of a right which the court has held does not need to be in some way connected to an expressed right in the—

Mr. BARR. Let me—let me go back, Mr. Henigan, to the court challenges, and it's my understanding that there was a challenge in 19—after 1986 to the 1986 machinegun ban out of Georgia brought against the U.S. Government by J.D. Farmer, and that the trial court struck down that law. Later an appellate decision reversed it. And it's my understanding, as I recall—and I was down in Georgia at the time—that the plaintiff, J.D. Farmer, applied for cert. to the Supreme Court.

I also recall—and this was just what I wanted to check on to see if my recollection is faulty or not—that HCI filed an amicus brief requesting the Supreme Court not hear the case?

Mr. HENIGAN. Yes, sir, that's correct. It's consistent with our view that these cases do not meet the standards for Supreme Court review because there is no—

Mr. BARR. OK. So simply the fact that there may be an important issue there and the fact that an organization chooses not to file a brief or not to file a—ask for a court to hear a case, we shouldn't read anything into that, should we?

Mr. HENIGAN. Well, I think you should read something into the fact that an organization which says that there is an absolute right to be armed in this country and says that an assault weapon ban violates that right, then refuses to go to court to try to vindicate that—

Mr. BARR. But we certainly shouldn't read anything into HCI's decision similarly?

Mr. HENIGAN. Our amicus brief is totally—

Mr. BARR. That's—that's all, Mr. Chairman.

Mr. HENIGAN [continuing]. Consistent with our position. We argued to the Supreme Court that this is a settled issue of law, so there's no reason for the Supreme Court to hear that case.

Mr. BARR. I'm not saying that you're inconsistent. HCI is very consistent. They want to ban handguns. They're very consistent. All I'm saying is—

Mr. HENIGAN. We do not want to ban handguns—

Mr. BARR [continuing]. Is I think it's inconsistent to say that we should read something into what the NRA does or does not do, or an argument that they bring or don't bring, but we shouldn't do the same with HCI.

Mr. HENIGAN. We ought to at least get an explanation from the NRA of why they didn't sue on second amendment grounds.

Mr. MCCOLLUM [presiding]. Your time has expired.

Mr. Bartlett is here today with us and wishes to be allowed to ask some questions, and you'll be recognized now, since the subcommittee members have finished, for 5 minutes, if you'd like.

Mr. BARTLETT. Thank you very much. I really appreciate this privilege. I'm not a member of this committee. I'm a member of the Firearms Task Force, and I'm very privileged that you let me sit in on these hearings and ask some questions.

Mr. HENIGAN. Has there been an amendment that nullified the 10th amendment that I've missed?

Mr. HENIGAN. No, the 10th amendment is——

Mr. BARTLETT. All right. Well, let me read the 10th amendment then. Let me read it to you.

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." That seems to be most implicit and explicit, that any power that's not delegated to the United States belongs to the States and to the people, and that would seem to mean all rights.

Mr. HENIGAN. Well, the—it talks about powers, not rights, and the question—the issue, according to the Supreme Court, under the 10th amendment is whether the Federal Government has the power to command a State to enact legislation. The Brady bill did not command any State to enact any legislation. That's why I believe ultimately the courts are going to uphold the mandatory background check provision of the Brady law. That's basically the 10th amendment issue that is before the Court——

Mr. BARTLETT. I was not so much concerned about the Brady law as I was about your statement that we have no rights in this country unless they are explicitly set forth in the Constitution. I think the Constitution explicitly says that we have all the rights, all the power. A right is a power, sir. We have all the rights, all the power, that are not specifically delegated to the Federal Government and to the States.

You indicated that you think that the second amendment says that people can only have guns if they're a part of a well-regulated militia. Does that mean that you're OK with our citizens having their second amendment right if they buy a set of KMO's and if they organize and go out and practice wargames on the weekend? Does that make it OK for them to have a gun?

Mr. HENIGAN. Of course not. That is a total distortion of the militia——

Mr. BARTLETT. Well, then, you didn't really mean what you said about the militia, did you?

Mr. HENIGAN. I did mean what I said——

Mr. BARTLETT. Do you think the militia's the army and the navy?

Mr. HENIGAN. What I made clear was that the militia, by its nature, is an instrument of State government. This doesn't give all of us the right to form our own little private militia and start training in the woods, if we don't like gun control laws or any other kind of laws. That stands the——

Mr. BARTLETT. If you read the Federalist——

Mr. HENIGAN [continuing]. Militia concept on its head.

Mr. BARTLETT. If you read the Federalist Papers and put in the milieu of that time the Constitution, and what our forefathers meant to do when they came back in 1791 with 12 amendments, 10 of which were ratified and became the Bill of Rights, I think that you would have to agree that the intent of the 2d amendment

was to permit the citizens to protect themselves against an oppressive central government and to protect themselves against other citizens that would threaten them.

Mr. HENIGAN. Mr. Bartlett, I would refer you to my written statement on the question of the Federalist Papers; I do address the Federalist Papers and how they are distorted by those who would advocate this individual rights view. It's at page 4, footnote 7. I take a specific quotation from James Madison that is distorted again and again and again because he was talking about the importance of being armed, but he was talking about it in the context of the organized State militia, and that is what is often left out of the quotations advanced by the NRA and its friends.

Mr. BARTLETT. There's an old saying that the thinnest sheet of paper has two sides, and I think that this is a good evidence of that. I'm sure you are convinced that these so-called gun control laws affect crime. By the way, that is an oxymoron; of course, you can't control a gun; it's an inanimate object. You control people.

But if that's true, sir, if it were really true that gun control, restrictive gun control legislation would affect crime, then the District of Columbia should be the safest place on this planet. It obviously is not, sir. What additional—what additional restrictive gun control laws do we need to make the District of Columbia the safest place on the planet?

Mr. HENIGAN. As has been well established in study after study, the lack of a rational Federal gun control policy undercuts the effectiveness of local gun control laws. The guns that are being used in crime in the District of Columbia don't come from the District of Columbia. They originate in States that don't have gun control laws, and that is why we need a comprehensive Federal policy. Gun control laws at the local level are better than nothing, but you've got to stop that interstate gun trafficking, and that's what Brady II would do.

Mr. BARTLETT. My time is up. I'd just like, Mr. Chairman, to ask one more question, kind of a rhetorical question.

You talk about licensing and regulating guns. Tell me, sir, why would a criminal want his gun registered?

Mr. HENIGAN. Well, the point is that if a criminal does not register his gun, we have grounds to arrest him and get him off the street.

Mr. BARTLETT. By definition, sir, by definition, sir, he is a criminal.

Mr. MCCOLLUM. Mr. Bartlett, your time is up.

Mr. BARTLETT. My time is up? Thank you very much, Mr. Chairman.

Mr. MCCOLLUM. Mr. Schumer has returned, and I'll recognize you for 5 minutes.

Mr. SCHUMER. Thank you, Mr. Henigan.

And I just—sometimes the opponents of this just—you know, they don't listen to logic. They bring up D.C. and New York all the time. The facts are that those guns come from out of New York State and out of D.C. Get with it. Make some arguments that argue the issue, not something that has nothing to do with the issue. We don't have a barbed wire fence around D.C. or around New York State, so if a gun is bought in Georgia or Florida, we

can check if it comes into our State. There may be other arguments. There are arguments about the balance of people's rights and things, but there is no argument—none—that D.C. or New York, which have tough laws, have high crime rates when it's established beyond any doubt that 90 or 95 percent of those guns come from other States with no gun control laws. So let's get with it and let's stop all this.

I sometimes think the opponents of this don't want to argue the issue. They want to argue every other issue, every other issue. They want to argue whether we should have mandatory sentences. They want to argue whether we should have tough punishment. But they don't want to argue the issue of gun control, because they come up with these kinds of things that just aren't reality. That's not what's happening.

So you stick with it, Mr. Henigan.

Mr. HENIGAN. Thank you.

Mr. SCHUMER. And I would say one other thing. I heard in my absence Mr. Buyer was saying, well, you're from Handgun Control. You are.

Mr. HENIGAN. Yes, I am.

Mr. SCHUMER. You make no pretense about it.

Mr. HENIGAN. That's right.

Mr. SCHUMER. Unlike the NRA, you're not setting up front groups like the Law Enforcement Association and groups like that which are truly funded and work hand in glove with the NRA, but they don't want to say it.

Mr. HENIGAN. That's right.

Mr. SCHUMER. I commend you for being forthright about where you come from, and it's not another group that would be called Safety in America, that would be funded, work hand in glove with Handgun, and you not say who it is. So good for you. And I think some of the LEAA people should learn that lesson.

Mr. HENIGAN. Congressman Schumer, might I add that the Federal courts that have consistently upheld gun control laws and endorsed the militia interpretation of the Constitution are not on the salary of Handgun Control.

Mr. SCHUMER. Right. I don't think Warren Burger was a big advocate of handgun control, and he said on the second amendment the NRA lies.

Mr. HENIGAN. Right.

Mr. SCHUMER. He didn't qualify it. He said they lie. And, you know, every court has ruled against them. Now I know what these fine people will say they didn't rule on point. Bring some more cases. I hope you do. Bring as many cases as you can. You will find that every court—my guess is the Supreme Court will be nine to nothing in terms of any case you bring that says the second amendment means you can't have a Brady law, you can't have an assault weapons ban, et cetera, because right now the cases from 1866, *Cruikshank* on forward, say that the second amendment does not violate rational gun regulation.

If there were a ban on handguns, total ban, who knows? Maybe it would happen. I doubt it. I wonder what your opinion would be, Mr. Henigan, but I'm not for a ban on handguns. I'm not for that. I'm for licensing. I'm for registration.

And I would simply say to my colleagues from different districts, I was quite interested that Chief Wilson said what would work in Kennesaw, GA, requiring every household to have a gun, he was for it in New York and Chicago and Los Angeles. I'd like him to talk to the New York City Police Chief, Mr. Bratton. I'd like to talk to the head of the PBA, the Patrolmen's Benevolent Association, Mr. Caruso.

I want to ask—let's ask Dr. Cottrol and Dr. Malcolm and Dr. Polsby—do you think it's a good idea to require every household to have a gun, as they did in Kennesaw, GA, throughout America?

Mr. COTTROL. No, I would not require. I would certainly say that the right of people to have a gun should be protected.

But, also, Congressman Schumer, if I might say something, you have misstated what the Court did with *Cruikshank*. *Cruikshank* did not involve the question of the extent to which Government, State or Federal, may or may not regulate gun ownership. *Cruikshank* involved the issue of the extent to which Congress was authorized under the 14th amendment to extend the protections of the 2d amendment against individual deprivations of the 2d amendment. And if you read *Cruikshank* again, it says the same thing about the first amendment that it does about the second amendment; namely, that it does not protect against private action—

Mr. SCHUMER. I have to reclaim my time because it's limited. All I said is none of the cases have said that gun control is against the second amendment—not a one.

Mr. COTTROL. *Cruikshank* did not involve an issue of governmental gun control.

Mr. SCHUMER. All I said is none of the cases that involve guns from second amendment on have said—any of them have even a scintilla of a hint that gun control laws such as we have on the books or such as we want to pass are unconstitutional.

Mr. COTTROL. Would you have been willing to let the extent of equal protection rest with *Plessey* in 1896? In 1896, the Supreme—

Mr. SCHUMER. Bring a case.

Mr. COTTROL. Wait. In 1896, the Supreme Court was perfectly willing to say—

Mr. SCHUMER. Dr. Cottrol, please—

Mr. COTTROL [continuing]. That's a separate but equal—

Mr. SCHUMER. Please, we don't have to argue the Supreme Court doctrine—

Mr. COTTROL [continuing]. Was OK and that this—

Mr. SCHUMER. Please, it's my time, Dr. Cottrol. Please, we don't have to argue that Supreme Court precedents change. Of course they do. But I have a *Brown v. Board of Education* that I can cite that's been on the books for 41 years that overturned *Plessey*. You have no equivalent *Brown* yet. Bring a case.

Mr. COTTROL. In 1910—

Mr. SCHUMER. Bring a case.

Mr. COTTROL. In 1910, you would not have had *Brown*.

Mr. MCCOLLUM. Mr. Schumer—

Mr. SCHUMER. But we're not in 1910, sir. We're in 1995.

Mr. COTTROL. With respect to the second amendment we are, sir.

Mr. SCHUMER. Sir, let me just say—well, that was a brilliant argument, Dr. Cottrol. [Laughter.]

Let me just say I would welcome somebody to bring a case head-on—head-on: is Brady unconstitutional? I know they've sort of nibbled around the edges talking about locals paying for it. Is the assault weapons ban unconstitutional? I hope the NRA will, or some of its allies. I welcome that case.

Mr. MCCOLLUM. The gentleman—

Mr. SCHUMER. Until that point, it's constitutional.

Mr. MCCOLLUM. The gentleman's time has expired.

I understand, Mr. Heineman, you did not get a chance to question, and I would yield to you if you would desire 5 minutes.

Mr. HEINEMAN. Thank you, Mr. Chairman. I did get a question, but I passed on it. Being I wasn't here during the presentations, I can only comment on the debate subsequent to the presentations.

And I'm not going to yell at you, Mr. Henigan. You've earned your money today so far. But your statement about Brady II and registration of guns, do you believe or does your organization believe that the criminals will register their guns?

Mr. HEINIGAN. The point of registration is to make sure that every transaction in a handgun is documented. To the extent that people violate the registration laws, we should arrest them and prosecute them. We don't—it's not enough to pass these laws; we must enforce them. We agree with you on that.

Mr. HEINEMAN. Well, do you think—

Mr. HEINIGAN. But the basic legal structure to regulate handguns is not in place right now. Now we've got it half in place—

Mr. HEINEMAN. Excuse me, Dr. Henigan. Excuse me.

Do you think that would have a sobering effect on the criminals, that because they could be arrested for not registering their guns, that they would register them?

Mr. HEINIGAN. It gives us another tool to deal with people who want to—

Mr. HEINEMAN. To deal with the honest people—

Mr. HEINIGAN [continuing]. Operate outside the law.

Mr. HEINEMAN. That's like locks are on doors to keep the honest people out. Those regulations are to deal with the law-abiding citizens. Now I've been in the business a long time, and criminals are outlaws. Of course we have in-laws, too, but I'm talking about outlaws in the sense of the 19th century where you were the criminals; yet, they called you outlaws. Criminals today are outlaws because they don't believe in the law, because they violate the law, and I don't think we can have any effect on criminals by initiating a registration initiative. I really don't.

Mr. HEINIGAN. Well, the California Chiefs of Police just issued a statement not long ago which endorsed registration of handguns, and one of the points they made is that it's going to be a very important law enforcement tool because it's going to allow us to trace handguns to the point where they went into the hands of a criminal. So we can find out who transferred them into the hands of a criminal.

Mr. HEINEMAN. That's a nice exercise, but it doesn't—it doesn't—it doesn't stop the criminals from getting the guns. And in that regard, I'd just like to mention something that my colleague, Mr.

Schumer, said across the aisle, and he's right. Those guns are not purchased in Washington, DC. They're not purchased in New York. Well, there's a secondary market to that. There's a subculture that does sell guns in Washington, New York, and Detroit, or any other place, Raleigh, NC, guns in the black market.

Mr. HENIGAN. That's right.

Mr. HEINEMAN. If the people here want guns, I would be very surprised—if you went on the street in some of the high-risk neighbors and tried to purchase a gun, you could do that, if they were sure you were not law.

So I've heard the debate here, and we're going to be arguing this for another 20 years. Until the Supreme Court gets enough guts to get in that ring between the two boxers, you're not going to get a decision.

Mr. HENIGAN. Well, why doesn't the NRA have enough guts to bring a case? That's what I want to know.

Mr. HEINEMAN. Well, I'm not talking about NRA. I'm just talking about the practicalities of the argument. We've been arguing the legality of the second amendment for as long as I can remember. We have gotten no resolution to that. We have gotten the Supreme Court to come forward and interpret the second amendment. They certainly have no—they certainly have no concern about interpreting the first amendment.

Mr. HENIGAN. Mr. Heineman, I think the Supreme Court interpreted the second amendment in 1939.

Mr. HEINEMAN. Well, then——

Mr. HENIGAN. And the lower courts are not confused about it. They're not conflicted about it. They say the same thing over and over again. The problem is people don't understand what the second amendment means. It's not that the Supreme Court hasn't told the American people what it means. It's that you have this constant barrage of gun lobby propaganda that is misleading people. Courts don't issue press releases, unfortunately——

Mr. HEINEMAN. Well, then, who's doing——

Mr. HENIGAN [continuing]. But the NRA does.

Mr. HEINEMAN. Who's not doing their job in this country? If the Supreme Court has stated the law of the land, then how come there's so much confusion? Who's not doing the job in this country, because people do have guns. You're differentiating between what's an assault weapon or what's not an assault weapon. Why are we engaged in this if the Supreme Court has made a decision? Somebody's not doing their job?

Mr. HENIGAN. Well, I think Chief Justice Burger thought somebody really did need to speak out on this because people really were being misled.

Mr. HEINEMAN. Burger's not there anymore.

Mr. HENIGAN. Well, he—he was Chair of the Bicentennial Commission of the Bill of Rights at the time he made these statement, and he was simply appalled——

Mr. HEINEMAN. Well——

Mr. HENIGAN [continuing]. At the public ignorance of the case law of the second amendment, and he spoke——

Mr. HEINEMAN. Either that argument fails or we fail in not doing something about it. I submit to you that it is not clear, and it was

clear, then there should be some enforcement. And if there's no enforcement, it's because it's not clear or there's no law. And I've been chasing this thing for 20 years, and I've heard exactly the arguments we've had here today, and we'll be doing the same arguments 20 years from now unless we come to some practical——

Mr. MCCOLLUM. Mr. Heineman, your time is up and we do have a vote on.

Mr. HEINEMAN. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Thank you very much.

Mr. Scott wanted to ask one brief question. Boy, it's got to be brief because we've got to get out of here.

Mr. SCOTT. It's very brief. We've gone through the history and whether you think the Supreme Court should have decided one way or another or not, what your wishes are, but I think we have established that there are several Supreme Court cases clearly establishing that the second amendment doesn't give an individual right to bear arms, and I ask for any case to the contrary. And subsequent to that, Mr. Chairman, I think the Brady cases came up, and my question is whether or not the challenges to Brady had anything to do with the second amendment, or was it a Federal mandate general-type issue?

Mr. HENIGAN. Mr. Scott, the challenges to Brady have nothing to do with the second amendment, and this panel could not cite this committee a single case on their side of the issue, not a single one. They've been asked several times. We've got a whole bunch of professors here. Not a single case comes to mind.

Mr. MCCOLLUM. Dr. Cottrol—Mr. Cottrol, would you like to respond? And then we've got to close this out.

Mr. COTTROL. Yes, I would. The right, the constitutional rights of the American people are not limited by the litigation strategy of a private organization. Would that the—if that were the case, then the scope of equal protection in the 1930's, the meaning of the 14th amendment's equal protection clause would have had to have been limited by the fact that the NAACP did not want to directly challenge separate but equal, but nibbled around the edges trying to create the right judicial atmosphere for an ultimate challenge. I think it's incredibly disingenuous to say, simply because the NRA or some other organization has not squarely brought a second amendment case, that, therefore, the second amendment cannot mean the protection of an individual right. Again, I would make that analogy to the NAACP's litigation strategy in the thirties and forties——

Mr. SCHUMER. Would the gentleman yield?

Mr. SCOTT. Mr. Chairman, I would point out that he—we asked for a case and he didn't give a case.

Mr. MCCOLLUM. Well, you have—we——

Mr. SCOTT. I yield the remainder of my time to the gentleman from New York.

Mr. MCCOLLUM. Well, we really don't have any more time at all, and we're going to have to go vote, and I want to close the panel out and thank them for coming here today. I'm not trying to cut anybody off, but the truth is we've got a whole other panel left, Mr. Schumer, and you've said quite a bit today.

I think the bottom line of all of this is that there is an open question about this issue. There is——

Mr. SCHUMER. Wait, wait——

Mr. MCCOLLUM. There is a body of thought that the Supreme Court has ruled——

Mr. SCHUMER. Would the gentleman yield?

Mr. MCCOLLUM [continuing]. And there is a group of distinguished professors who are here today——

Mr. SCHUMER. Who can't cite a case.

Mr. MCCOLLUM [continuing]. Two of them, in particular, and a professor—I mean an attorney of some repute in the area of this law—who believe that, indeed, individuals have a right to bear arms. And I think you've expressed that based upon your views about the common law, and so forth, and simply don't believe that there has been a ripe issue before the Court. We've heard both perspectives today. We're not going to get to any more clear resolution of this at all.

One final comment, I want to reiterate the fact that none of the three that were here on the there's a right to bear arms side of this are here because of the NRA; they're here because you are representing and you are professors or you are lawyers practicing private law, or whatever, at various universities. So while there may be arguments about——

Mr. SCHUMER. May I just have a one-sentence rebuttal?

Mr. MCCOLLUM. One sentence.

Mr. SCHUMER. One sentence, I would say to Dr. Cottrol, the NRA professes all over America what the second amendment means, and then doesn't bring a case. That's quite different than the analogy he was making.

Mr. MCCOLLUM. At any rate——

Mr. COTTROL. Not at all, sir. The NAACP in the thirties and forties also had very firm views as to what the equal protection clause meant and they waited until the proper time to bring the case.

Mr. MCCOLLUM. Well, the committee is in recess for 10, 15 minutes, I guess. We'll be back at a quarter of, and we'll proceed with the next panel.

Thank you very much for coming.

[Recess.]

Mr. MCCOLLUM. The Subcommittee on Crime will come to order.

We have a third panel here today, and I'd like to introduce them and ask them, when I do that, to come forward.

We are technically, I guess, in compliance, and I hope that now that this vote is essentially completed we'll get some more members to wander back in here. I don't want to keep everybody all day long over here.

Our first witness is Sgt. Walter Staples, supervisor in the homicide branch of the Metropolitan Washington, DC, Police Department. He spent more than 21 years with the D.C. Police Department and has served in the homicide division for 5 years.

You can go ahead and have a seat right there, Mr. Staples.

Our next witness is Gerald Hensley, a drug enforcement officer with the Baltimore City Police Department. A veteran of 13 years with the department, Officer Hensley spent the first 8 years of his career as a patrol officer.

Our third witness is Sgt. Don Cahill, chairman of the Legislative Committee of the Fraternal Order of Police, which represents over 270,000 officers nationwide.

And our last witness on this panel is Sgt. Simon Risk, a 19-year veteran of the St. Louis Police Department. He has spent all of those years working on the street, and he is currently the coordinator of a specialized 20-officer gun suppression unit for the St. Louis Police Department. Organized 2 years ago, the sole purpose of the gun suppression unit is to illegal guns off the streets of St. Louis.

Well, we want to welcome all of you today. We appreciate your spending the time coming and being with us. One or two of you I've met before, and I've known like Don Cahill whom I've known for a long time, but others I haven't. So we really look forward to your testimonies and thank you for coming.

Sergeant Staples, we're going to start with the people the way we introduced them. So you'd be the first to testify. The microphone is open there, but you need to pull it over to you. And you may proceed to make your statement to whatever degree you feel comfortable. Summarizing it, that would be fine; your whole statement will be submitted for the record, or if you wish to excerpt parts of it, that's your choice. Please proceed.

STATEMENT OF SGT. WALTER STAPLES, METROPOLITAN WASHINGTON, DC, POLICE DEPARTMENT

Sergeant STAPLES. OK, sir. Good afternoon.

My name is Walter Staples, and I'm a sergeant in the homicide branch of the Metropolitan Police Department. I've been a police officer in Washington, DC, for more than 21 years, including the last 5 years spent in the homicide branch. During my years in the homicide branch, I have supervised the investigations of more than 420 murders, more than 90 percent of which were committed with handguns. Believe me, I have seen firsthand what easy access to guns, particularly among young people, has meant to the people of the District of Columbia.

But I would like to talk to you today about one particular investigation I supervised which most of you are probably familiar with. I'm talking about the incident which occurred on November 22, 1994, at police headquarters, not far from where we sit today.

At roughly 3:30 in the afternoon an angry young man who had been questioned in an ongoing homicide investigation walked into police headquarters, rode the elevator to the third floor, and opened fire with a semiautomatic assault pistol on a group of police officers. Moments later one D.C. police officer, Sgt. Hank Daly, and two FBI agents, Special Agent Martha Martinez and Special Agent Michael Miller, were dead. Another officer, Special Agent John Kufta, was seriously injured.

At the time of the shooting I was across the street at the U.S. attorney's office. After the call came in and I was—I was one of the first officers to arrive on the scene. It's difficult to find the right words to describe my feelings when I entered the room. You can't imagine what it was like to come in and face the sight of your fellow officers, your friends, lying dead in their place of work.

Sgt. Hank Daly had been on the force for 28 years, and I considered him not only a valued colleague, but a close friend. I had

worked closely for many months on cases with Martha Martinez and Michael Miller. These men and women were all dedicated law enforcement professionals who were well respected and well liked. It still seems hard to believe that they're gone.

Looking back on the incident, I can't help asking myself if maybe one or all of these friends might be alive today if their assailant had been armed with a traditional revolver instead of a semiautomatic assault pistol. When four highly-trained professionals in police headquarters are vulnerable to this kind of attack, it is a pretty good indication of the destructive power of these weapons.

I've seen the harm that the Tech-9's and the Uzis can cause to law enforcement and to citizens alike, but I haven't seen much evidence that they serve any useful purpose. Outside of the military or law enforcement, I just don't understand why these weapons should be available or why anyone would want one. You don't need an Uzi or a Tech-9 to hunt.

As I'm sure you know, all law enforcement officers live with the knowledge that they are putting their lives on the line every day. It is part of our job and we deal with it, but that does not mean that police officers shouldn't be able to expect society to take some reasonable steps to protect them. In Washington, DC, we have tried to take some of these steps by instituting some of the Nation's strictest gun laws. Of course, it has been said maybe here today that our violent crime is proof that these laws don't work. If anything, it may prove that we need more sensible national laws, so that our city is not victimized by the flow of illegal guns from outside the District.

I understand you are in the process, through these hearings, of examining current gun control laws and the second amendment. I hope that in your deliberations you come to the conclusion that there is a point where reasonable men and women can agree on the need for some limits.

As a police officer, it seems reasonable to have laws designed to keep assault weapons off the streets. It seems reasonable to require background checks and a waiting period, so that guns don't end up in the wrong hands or to require that people demonstrate need before they are allowed to carry concealed weapons. I believe that these are important steps in our fight to reduce gun violence and ultimately save lives.

As this committee knows, there are many things this country can do to fight crime, but I don't believe that either the law enforcement community or the citizens would be served by the repeal of a sensitive and reasonable gun law.

[The prepared statement of Sergeant Staples follows:]

PREPARED STATEMENT OF SGT. WALTER STAPLES, WASHINGTON, DC, POLICE
DEPARTMENT

Good morning. My name is Walter Staples and I am a Sergeant in the Homicide Branch of the Metropolitan D.C. Police Department. I have been a police officer in Washington, D.C., for more than 21 years, including the last five years spent in homicide.

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I have seen the harm that TEC-9s and UZIs can do, to law enforcement and citizens alike. But I haven't seen much evidence that they serve any useful purpose. Outside of the military or law enforcement, I just don't understand why these weapons should be available, or why anyone would want one. You don't need an UZI or a TEC 9 to hunt.

As I am sure you know, all law enforcement officers live with the knowledge that they are putting their life on the line every day. It is part of our job and we deal with it. But that does not mean that police officers shouldn't be able to expect society to take some reasonable steps to protect them.

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As this committee knows, there are many things this country can do to fight crime but I don't believe that either the law enforcement community or the citizens will be served by the repeal of any sensible and reasonable gun laws.

Mr. McCOLLUM. Thank you very much, Sergeant.
Our next witness is Gerald Hensley. Officer Hensley.

**STATEMENT OF GERALD HENSLEY, OFFICER, BALTIMORE
CITY POLICE DEPARTMENT**

Officer HENSLEY. Good afternoon, sir.

I'm Officer Gerald Hensley. As you heard, I've been a member of the Baltimore City Police Department for 13 years, 8 years of my career as a uniformed officer and 5 years as a member of drug enforcement.

During the course of my career, I've seen drug dealers whom—I work in the confines of the eastern district, which is riddled with gunfire, gunshot victims, and drug dealers. In the course of my career, I've seen drug dealers whom I've worked very hard at apprehending take guns from—or the use of guns from a low caliber situation of handguns to weapons of Uzis and Tech-9's and assault weapon type of guns. I personally have faced in uniform and being in plain clothes drug enforcement officer situations involving Tech-9's and Uzis. Twice while in uniform, I assisted an officer in arresting a subject with an Uzi, which was concealed under his jacket, at a very highly infested drug corner.

On another case when I worked in uniform I was involved in a foot chase of a person who was armed with a Tech-9 who shot several rounds at police officers during the course of the foot chase. During the course of that foot chase this person concealed himself in a highly brushed area. Luckily, he was arrested and, luckily, the Tech-9 he was using, it jammed, which was found several feet from his person. I feel as though if that gun hadn't been jammed, he would have used that gun in an ambush to take officers' lives.

On another occasion, being a member of the eastern district drug enforcement unit, I had the unfortunate mishap of having to use my firearm in deadly force when I was confronted, as well as the other members of my eastern district drug enforcement unit, by a person armed with a Tech-9 which was fully loaded. That person was waiting in ambush for two of my coworkers to enter the living room area of a dwelling that we had ran through for CVS violations. As I reached the front of the house, I was fired upon by a person inside the front window with a .38 caliber which misfired. As that person was standing in the doorway with a gun pointing inside the doorway, I yelled at him. This person turned to me and pointed a fully loaded Tech-9. Unfortunately, I had to use deadly force and take his life.

On another occasion, I raided a house in the 1300 block of North Milton Avenue. At that house located on the bottom shelf of an open closet, where children between the ages of 2 and 6 were located, was a fully loaded Tech-9 on the bottom shelf, which is accessible to the kids.

Admittedly, I'm not an expert on the second amendment, and I understand people's interest in having guns to protect their families, for hunting and for sports shooting, but it seems to me that at some point common sense tells us that certain weapons are intolerable. I can't imagine why any law-abiding citizen would ever need to fire 30, 50, or 100 rounds without reloading.

As a cop who walks the streets and faces drug dealers, as a cop who's been shot in the line of duty, I face drug dealers on a regular basis, and it seems—and it made sense to me last year when Congress voted to ban assault weapons and large-capacity magazines. It made sense to me when we outlawed assault weapons or pistols in Maryland. As a cop, it makes sense to me that the fewer of these guns we have on the street, the better my chances of survival are, as well as innocent bystanders and citizens located within the confines of Baltimore City and across this country. I think we can keep all of America's police officers in mind and resist any temptation to appeal the assault weapon law.

Thank you.

[The prepared statement of Officer Hensley follows:]

PREPARED STATEMENT OF GERALD HENSLEY, OFFICER, BALTIMORE CITY POLICE
DEPARTMENT

My name is Gerald Hensley. I am a drug enforcement officer with the Baltimore City Police Department. I have been with the Department for nearly thirteen years; eight years as a uniformed officer on patrol and for the last five years on drug enforcement duty.

I am here today to share with this committee some of my experiences on the streets of Baltimore, which should help illustrate the threat that law enforcement officers are forced to operate under due to a proliferation of guns, and in particular semi-automatic assault weapons and large capacity gun magazines.

Since I joined the Police Department, I have seen the firepower of criminals, particularly drug dealers, grow from small caliber revolvers to military-style weapons which can shoot 30 bullets in less than ten seconds.

In my years of service I have personally encountered assault weapons on several occasions. In two of these encounters, we got lucky and confiscated the weapons before they could be used. Once, I was with another uniformed officer who found a semiautomatic Uzi in the jacket of a suspected drug dealer.

On another occasion, I participated in the service of a search and seizure warrant at a drug house where we found and confiscated a semiautomatic TEC-9. The weapon, which was fully loaded with 30 rounds, was on a bottom shelf of a closet in a bedroom occupied by children. Three children between the ages of four and six were actually present when we confiscated the gun.

I have also witnessed drug dealers using assault weapons. While I was still a uniformed officer, I saw a suspected drug dealer fire a semi-automatic TEC-9 at a group of officers; luckily the gun jammed before he hit them.

In May of 1991, I myself was threatened by a semi-automatic TEC-9. While on a routine patrol of a suspected drug area, my two partners and I noticed suspicious activity. While my two partners went in the back way, I went in the front. As I entered the house I noticed a gunman lying in wait for my partners with the TEC-9. I shouted to him and he turned and prepared to shoot me. Before he could, I shot and killed him.

Plainly, drug dealers are choosing to use assault weapons. This is a serious threat to the public and to law enforcement officers like myself.

When drug dealers shoot, they do not think about where their bullets go. And whether they are shooting at cops or at rival gangs, when they have guns which can shoot 30 or 100 bullets without reloading, there is a strong chance that innocent bystanders will be gunned down.

And, across the country we have already seen too many situations where outgunned police officers have been killed or wounded. While we are reloading, we could be at the mercy of desperate criminals who could shoot 30 to 100 rounds without reloading.

Admittedly, I am not an expert on the Second Amendment. And I understand people's interest in having guns to protect their families, for hunting or for sport shooting. But it seems that at some point common sense tells us that certain weapons are intolerable. I can't imagine why any law abiding citizen would ever need to fire thirty, fifty or one hundred rounds without reloading.

As a cop who works on the streets and faces drug dealers on a regular basis, it made sense to me last year when Congress voted to ban assault weapons and large capacity magazines. It made sense to me when we outlawed assault pistols in Maryland. As a cop it makes sense to me that the fewer of these guns we have on the street, the better my chances of survival.

I hope you will keep all of America's police officers in mind and resist any temptations to repeal the assault weapon law.

Thank you.

Mr. McCOLLUM. Thank you very much, Mr. Hensley. Sergeant Cahill, welcome.

**STATEMENT OF SGT. DONALD CAHILL, CHAIRMAN,
LEGISLATIVE COMMITTEE, FRATERNAL ORDER OF POLICE**

Sergeant CAHILL. Thank you, Mr. Chairman.

Gentlemen, my name is Donald Cahill. I'm a police officer of 23½ years. I've spent the last 4 years, and still am, currently assigned to the Federal Drug Task Force here in Washington, DC. I see crime and drugs every single day.

I'm pleased to appear before this Crime Subcommittee for the first time since convening of the 104th Congress, and I'm particularly gratified to speak to an issue which I believe we can all agree, and that, of course, is the right of the law-abiding citizen to keep and bear arms.

The Grand Lodge of the Fraternal Order of Police, which represents over 270,000 law enforcement officers nationwide, exists only to address the interests and concerns of its membership. That membership includes men and women who risk their lives every day to protect the rights of our citizenry, and that's all of those rights, not just the popular ones or the politically correct ones.

Neither do those who have accepted that responsibility of representing this organization have the luxury of taking a walk on a controversial issue. We're accountable to all of our membership for our actions, every bit as accountable as you are to your constituencies. Our national president runs for office every 2 years, and, believe me, running for office in the FOP is not a game for the faint-hearted. Our current president, Dewey R. Stokes, is nearing the end of his fourth term, and I can assure you he wouldn't have lasted this long if he didn't pay careful attention to the membership and their vision of what the FOP should stand for. That's why I'm somewhat bemused when I hear a cop say Dewey Stokes doesn't speak for me or the FOP isn't representing the views of its membership. If it didn't, we wouldn't be here.

Three of the many things the FOP stands for appear to be topical at this hearing. First is the rights under the second amendment. We support the right of law-abiding citizens to possess and enjoy firearms for hunting, target shooting, self-protection, and any other legitimate use. We dispute and reject any characterization to the contrary.

Second, we support a reasonable waiting period for a background check of an individual in connection with the acquisition of a firearm. The Brady law is working. It's keeping guns out of the hands of criminals. Are there any other ways to get guns? Sure. They can be stolen, purchased at flea markets from nondealers, bought with false ID, and if there was a simple way of addressing these means of acquisition, a way as simple and as effective as Brady, we'd endorse it in a heartbeat. But just because it's possible to get a gun other than from a dealer doesn't mean we should give up on closing dealer loopholes. We should take every step we can take.

You know, the Internal Revenue Code is full of loopholes, few of which have done me very much good, I might add, and if somebody suggested closing one and gave you the means to close it, would you say, no, I won't because there are 100 other ways to get around

taxes? Of course not. You'd close it and you'd go after the others. And that's what we've got to do here, is keep the loophole that Brady closed closed for good and get after the rest of the ways criminal get guns.

Why should we add to the criminal's arsenal? Why should we tinker with a law that hasn't kept a single law-abiding citizen from getting a gun, but has stopped thousands of people with criminal records? It just doesn't make sense?

The third issue which is clearly on the table today is the assault weapons ban. We support the passage of the ban and we support its retention. If you talk about cosmetic nature of the features, you can talk about the greater firepower of all the other weapons. You can talk about how relatively few assault weapons there are compared to conventional weapons. There's one fact that the NRA can't make go away, one little secret, and that is that assault weapons are eight times more likely to be used in crime than any legitimate sporting weapon. So who needs them? The crooks need them. It makes no more sense to make a second amendment argument for these weapons than it does for stinger missiles or nuclear warheads.

I personally lost an officer 2 years ago to an assault weapon. The officer was on a raid of a house of a law-abiding citizen that just happened to go off his medication the night before and shot an officer up in Arlington. They were hitting his house to apprehend the person that committed the violation. The person pulled out an assault weapon and shot him right through the ballistic shield, which was developed to protect him from weapons, but, unfortunately, it doesn't protect you from an armor-piercing round, which is what the AK-47 is.

So, in summary, Mr. Chairman, we support the Brady law and the assault weapons ban. We support the second amendment. There's no contradiction, and that's the position of the FOP and it's offered by our membership.

I also request that the FOP resolutions addressing the Brady law and the assault weapons ban, which passed 62 percent and 58 percent majorities respectively at our national convention, be included in the record. I'm sure that all of you who count votes will agree that these are pretty impressive, given the nature of the issues. And I have enclosed them with my testimony.

Thank you.

Mr. McCOLLUM. They'll be admitted to the record, without objection.

Sergeant CAHILL. Thank you.

[The prepared statement of Sergeant Cahill follows:]

PREPARED STATEMENT OF SGT. DONALD CAHILL, CHAIRMAN, LEGISLATIVE
COMMITTEE, FRATERNAL ORDER OF POLICE

I'm pleased to appear before the Crime Subcommittee for the first time since the convening of the 104th Congress. I'm particularly gratified to speak to an issue on which I believe we all can agree; the right of law abiding citizens to keep and bear arms.

The Grand Lodge, Fraternal Order of Police, which represents over 270,000 sworn law enforcement officers nationwide, exists only to address the interests and concerns of its membership. That membership includes men and women who risk their lives every day to protect the rights of our citizenry -- all of those rights -- not just the popular ones or the politically correct ones. Neither do those who have accepted the responsibility of representing this organization have the luxury of taking a walk on a controversial issue. we are accountable to our membership for our actions -- every bit as accountable as you are to your constituencies.

Our national president runs for office every two years -- and believe me running for office in the F.O.P. is not a game for the faint hearted. Our

current president, Dewey R. Stokes is nearing the end of his fourth term — he wouldn't have lasted this long if he didn't pay careful attention to the membership and their vision of what the F.O.P. should stand for.

That's why I'm somewhat bemused when I hear a cop say "Dewey Stokes doesn't speak for me", or "The FOP isn't representing the views of its membership". If we didn't we wouldn't be here.

Three of the many things the F.O.P. stands for appear to be topical at this hearing:

First, rights under the Second Amendment. We support the right of law abiding citizens to possess and enjoy firearms for hunting, target shooting, self protection or any other legitimate use. We dispute and reject any characterization to the contrary.

Second, we support a reasonable waiting period or background check of an individual in connection with the acquisition of a

firearm. The Brady Law is working -- it's keeping guns out of the hands of criminals. Are there other ways to get guns? Sure there are -- they can be stolen, purchased at flea markets from non-dealers, bought with false ID -- and if there was a simple way of addressing those means of acquisition -- a way as simple and effective as Brady -- we'd endorse it in a heartbeat. But just because it's possible to get a gun other than from a dealer doesn't mean we should give up on closing dealer loopholes -- we should take every step we can take. You know, the Internal Revenue Code is full of loopholes -- few of which have done me much good I might add -- and if somebody suggested closing one, and gave you the means to close it, would you say "No, I won't, because there are 100 other ways to get around taxes"! Of course not, you'd close it and go after the others. And that's what we've got to do here -- keep the loophole that Brady closed closed for good and get after the rest of the ways criminals get guns. Why should we add to the criminal's arsenal? Why should we tinker with a law that hasn't kept a single law abiding citizen from getting a gun but has stopped thousands of people with criminal records?

It just doesn't make sense.

The third issue which is clearly on the table today is the assault weapon ban. We supported the passage of the ban and we support its retention.

You can talk about the cosmetic nature of the features, you can talk about the greater firepower of other weapons, you can talk about how relatively few assault weapons there are compared to conventional weapons -- there's one fact the NRA can't make go away, one dirty little secret: assault weapons are eight times more likely to be used in crime than legitimate sporting weapons. Who needs them? Crooks need them, apparently. It makes no more sense to make a Second Amendment argument for these weapons than it does for Stinger missiles or nuclear warheads.

In summary Mr. Chairman, we support the Brady Law and the Assault Weapons ban and we support the Second Amendment. There is no contradiction. That's the position of the F.O.P. and it's supported by

our membership.

I request that F.O.P. resolutions addressing the Brady law and assault weapons ban which passed with 62% and 58% majorities respectively, be included in the record. I'm sure that all of you who count votes will agree that these are pretty impressive numbers, given the nature of the issues.

Thank you.

RESOLUTION NO. 6

The following resolution is proposed by the National Legislative Committee of the Grand Lodge and was submitted on June 29, 1993.

- WHEREAS: Assault weapons are in abundance among violent criminals and drug gangs on American streets, and
- WHEREAS: Using these assault weapons in violent acts contributes to the plague sweeping our streets, and
- WHEREAS: Legislation has been introduced in the United States Congress that provides hard penalties for the use of assault weapons in the commission of a violent or drug trafficking crime, and
- WHEREAS: This legislation prohibits the future importation of five (5) imported types of military assault weapons and future manufacture of four (4) domestic assault weapons that have become the drug traffickers "weapon of choice," and
- WHEREAS: The import and manufacturing prohibitions of the bill last for only three (3) years while it also directs the attorney general to conduct an 18 month study to determine the impact of the bill on violent and drug crimes,

NOW, THEREFORE, BE IT RESOLVED THAT:

The delegates here assembled at the Fifty-first Biennial Conference in Louisville, Kentucky, hereby direct the National Legislative Committee to work for passage of the bill titled the "Anti-drug Assault Weapons Limitation Act of 1993" and designated S.639 in the Senate and H.R. 1472 in the House of Representatives.

RESOLUTION NO. 7

The following resolution is proposed by the National Legislative Committee of the Grand Lodge and was submitted on June 29, 1993.

WHEREAS: Every year, more than 24,000 Americans are killed with handguns of which 52% were homicides, and

WHEREAS: Firearm injuries result in over \$1 billion in hospital costs thus causing individual health care plan costs to rise, and

WHEREAS: According to figures provided by the United States Department of Justice, armed offenders with handguns committed an average of 639,000 violent crimes each year between 1979 and 1987 and that figure is rising for the following years, and

WHEREAS: Legislation titled the "Brady Handgun Violence Prevention Act" has been introduced in the United States Congress and has a probability of helping reduce the number of handguns available for violent acts by providing for a five (5) day waiting period and a purchaser background check prior to the sale of a handgun.

NOW, THEREFORE, BE IT RESOLVED THAT:

The delegates here assembled at the Fifty-first Biennial Conference in Louisville, Kentucky, hereby direct the National Legislative Committee to work for passage of this important legislation.

Mr. McCOLLUM. Thank you, Sergeant Cahill.
Sergeant Risk, please proceed.

STATEMENT OF SGT. SIMON RISK, ST. LOUIS POLICE DEPARTMENT

Sergeant RISK. Good afternoon.

My name is Simon Risk, and I'm a sergeant and a 19-year veteran with the St. Louis Police Department. During my 19 years on the street—in fact, during my 19 years in the department, I've always worked the street. I never had a desk or an administrative job. For the past 2 years, I've been the coordinator for a specialized 20-officer gun suppression unit. The men in the unit are hand-picked and are probably some of the most aggressive police officers in the department. The sole purpose of the gun suppression unit is to take illegal guns off the street. The men do not respond to 911 calls for service unless they are gun-related and our beat is the entire city. We wear a uniform, drive marked police vehicles, and work in pairs.

Last year alone our unit seized 402 firearms, more than 10 percent of the guns seized by the entire police department in 1994. We have seized every gun imaginable from an M-14, 7.62 caliber sniper rifle, equipped with a 30-round magazine and a high-powered sniper scope, to cheap Saturday night specials. We've seized AK-47's, AR-15's, MAC-10's and -11's, and Tech-9's. Many of these guns were taken from juveniles.

Just last week one of the officers in the unit took a handgun equipped with a large-capacity magazine and a laser dot site. The handgun turned out to be stolen from Texas. The truth is that the gun suppression unit has seized just about everything but a bazooka.

The primary reason for the creation of the gun suppression unit is because of the skyrocketing homicide rate in St. Louis. From 1988 to 1993, the number of homicides in St. Louis increased from 140 to 267, an increase of nearly 91 percent. When you take into consideration that the population of St. Louis has actually declined during the same period, the rate of homicides jumped by 110 percent. During that same period, the number of juvenile court referrals for homicide has increased fivefold.

I'm here to tell you that the streets are dangerous and the street cops need your help. I support aggressive enforcement, tougher sentences, and have always supported the death penalty. I am not antigun. I have a 12-year-old son. He has a .22 caliber rifle that was given to him by his grandfather, and I've taken him out and taught him how to shoot it. I even belonged to the NRA for a while.

I believe every citizen has a right to own a gun for self-protection, but citizens should receive proper training and should store the gun under a lock and key. I do not, however, believe that citizens should carry concealed weapons.

For 4 years the gun lobby has been pushing for CCW laws in Missouri. Liberalizing the CCW law in Missouri would be a big mistake. It could turn minor traffic altercations and insignificant bar fights into gun battles. Our biggest fear is that the drug dealers will get their friends, who have not been convicted of a felony, to obtain a legal gun permit to carry a concealed weapon. With

their friends carrying these weapons, the drug dealer will have instant access to a firearm, should he need it.

We do not need more guns on the street. We need fewer guns. I support the current assault weapon law. Repealing the assault weapon ban, including the ban on large-capacity magazines, would be a mistake.

We seize assault pistols, assault rifles, and every kind of 9-millimeter equipped with large-capacity magazines. I know the law is working because I have seen the price of assault weapons go up. The price of large capacity magazines has also increased since the ban went into effect.

I saw last week on C-SPAN that your subcommittee had a witness testify that he had protected himself with an assault rifle. Well, what happens if someone fires in self-defense an AR-15 and misses? Well, what will probably happen is that bullet could easily end up across the street killing the neighbor since that round will penetrate just about any wall in today's houses. Assault pistols like the Tech-9 I don't believe are any good for self-defense. They can't be aimed and fired with any accuracy, but they're very effective for spray-firing in a drive-by shooting, and that's why we seize so many from gang members and drug dealers.

In closing, I'm not a constitutional or a legal expert on the second amendment. I am an expert on what life is like for a cop on the streets of St. Louis. Cops are under ever-increasing danger. The bad guys have greater and greater firepower. We are seizing more and more guns, especially from kids, assault weapons and high-powered 9-millimeter handguns equipped with large-capacity magazines, and, unfortunately, these kids could care less whether they shoot a cop. Cops on the street need your assault weapons ban.

Thank you.

[The prepared statement of Sergeant Risk follows:]

PREPARED STATEMENT OF SGT. SIMON RISK, ST. LOUIS POLICE DEPARTMENT

Good afternoon.

Thank you Mr. Chairman for the opportunity to appear before your subcommittee today.

My name is Simon Risk. I am a sergeant and 19-year veteran with the St. Louis, Missouri Police Department. During my 19 years, I have always worked the street. In other words, I have had neither a desk nor an administrative job. I was a patrol officer for five years in one of the toughest districts in the city. For the past two years, I have been the Coordinator for a specialized 20-officer Gun Suppression Unit. The men in my unit are hand picked and are some of the most aggressive cops in the department. Some have even referred to our's as an elite unit.

The sole purpose of the Gun Suppression Unit is to take illegal guns off the streets. My men do not respond to 911 calls for service unless they are gun related and our beat is the entire city. We wear a uniform, drive marked vehicles and work in pairs. Last year alone, my unit seized 402 firearms -- more than 10% of the guns seized by the entire department in 1994.

We have seized every gun imaginable -- from a 7.62 NATO caliber M-14 sniper rifle equipped with a 30 round magazine and a high optic power scope to cheap Saturday Night Specials. We have seized AK-47's, AR-15's, MAC 10's, MAC 11's and TEC-9's. Many of these guns were taken from juveniles. Just last week one of my officers took a handgun equipped with a large capacity magazine and a laser site. That handgun was stolen in Texas. The truth is the Gun Suppression Unit has seized just about everything but a bazooka.

The primary reason my Chief created the Gun Suppression Unit is because of the skyrocketing homicide rate in St. Louis. From 1988-1993, the number of homicides in St. Louis increased from 140 to 267, an increase of nearly 91%. When you take into consideration that the population of St. Louis has actually declined during the same period, the rate of homicide

jumped by 110%. During that same period, the number of juvenile court referrals for homicide increased fivefold.

I am here today to tell you that the streets are dangerous and the street cops need your help. I support aggressive enforcement, tougher sentences and have always, always supported the death penalty. I am not anti-gun. Not long ago, I took my 12-year-old son out to my brother's farm and taught him to shoot the .22 rifle that belonged to my father-in-law. I even belonged to the NRA at one time. I believe citizens have a right to own guns for self-protection. Those citizens should receive training and should store their guns under lock and key.

I do not, however, believe that citizens should carry concealed weapons (CCWs). For four years, the gun lobby has been pushing CCWs in Missouri. Liberalizing the CCW law in Missouri would be a big mistake. It would turn minor traffic altercations and insignificant bar fights into gun battles. My biggest fear is that drug dealers will get their friends, who have not been convicted of a felony, to obtain a legal permit to carry concealed. With their friends legally carrying a concealed weapon, the result will be that the drug dealers will have easy and instant access to a gun and we will not be able to touch them. Believe me, we do not need more guns on the streets; we need fewer guns.

I support the current assault weapon law. Repealing the assault weapon ban including the ban on large capacity magazines would be a huge mistake. We seize assault pistols, assault rifles and every kind of 9mm equipped with large capacity magazines. I know the law is working because I have seen the street price of assault weapons go up. The price of large capacity magazines has also increased since the ban went into effect last year.

I saw last week on C-Span that your subcommittee had a few witnesses testify that they had protected themselves with an assault rifle. What happens if someone fires, in self-defense,

an AR-15 and misses? What will happen is that the bullet could just as easily end up killing the neighbor across the street after it penetrates two, three or four walls.

Assault pistols like the TEC-9 are no good for self-defense because they can't be aimed and fired with any accuracy. But they are terribly effective for spray-firing in a drive-by shooting. That's why we seize so many from gang members and drug dealers.

In closing, I am not a constitutional or legal expert on the Second Amendment. I am an expert on what life is like for a cop on the streets of St. Louis. It's not a pretty life. Cops are under ever increasing danger. The bad guys have greater and greater firepower. We are seizing more and more guns, especially from kids -- assault weapons and high powered 9mm handguns equipped with large capacity magazines. And, unfortunately, these kids could care less whether they take down a cop. Cops on the street need the assault weapon ban.

Thank you for your attention. I will be happy to answer any questions.

Mr. McCOLLUM. Thank you very much, Sergeant.

I was at a Federal firing range very recently and fired a number of different weapons. It's not the first time I've fired weapons, but this one happens to be current, and I was reminded of that during the testimony today. Of all the ones I fired—and I fired semiautomatics and rifles and handguns, and so forth—I thought the one that impressed me the most, and I really had not had the experience of comparing it even though I have been hunting in my life quite a bit, was the simple .12-gauge pump-action shotgun, when I sat there and was throwing up all the targets I was supposed to hit. And maybe I'm used to hunting with that, so it was pretty easy for me to do, but I could unload that gun very rapidly and hit every one of those targets and know how deadly that is compared to some of the other weapons.

What I guess I want to ask—I know your views; you've stated them very well here today, and I know, Sergeant Cahill, you've done this for the Fraternal Order of Police for a number of years now. What is the line we draw? How do we determine what guns we leave in the hands of the public and what ones we don't? Obviously, some that are used for hunting purposes like that .12-gauge shotgun are just as dangerous for your officers on the street and maybe more dangerous than some of the guns that have been banned in the assault weapon ban. How do we make that distinction? It's been a puzzle to me. I've listened to the BATF try to do that over the years, and we got a law that draws certain lines, but most of the police I talk with, whether they're on either side of the issue of banning assault weapons, think that the ban guidelines are artificial. Where do we draw the line?

Sergeant CAHILL. Mr. McCollum, if I may start to address it, I don't think that you can come out and define the exact line, but things have gotten out of hand over the years. We're not finding criminals running around with shotguns. We're finding them running around with weapons that have rounds that will go through two and three people, that will go through a wall of a house and kill somebody, that will spray a room, that will spray a street corner, and that's where the problem is. The problem is not with shotguns.

Mr. McCOLLUM. But the problem isn't really so much with these semiautomatic rifles, either. It's with the handgun, isn't it?

Sergeant CAHILL. No, sir, it's with the semiautomatic.

Mr. McCOLLUM. Well, semiautomatic handgun. And isn't a handgun far more prevalent than any Uzi or any of these other guns out on the streets? I mean, the rifles are not as common, from the statistics I've seen, by any means, as a handgun of one type or another. Am I not—

Sergeant CAHILL. We're finding a lot of handguns out there, but we also find a lot of MAC-10's and MAC-11's. That's the problem.

Mr. McCOLLUM. Those are semiautomatic pistols you're talking about—

Sergeant CAHILL. That's right, sir, but they're not—as you well know, they're not a standard pistol. They're not a standard site on them that a person would normally take target practice with or go hunting with.

Mr. MCCOLLUM. Al right, well, let me ask you this: let's assume I bought into the argument, which as you know I don't, but I'm going to try to be objective in my questioning because——

Mr. SCHUMER. It's never too late, Mr. Chairman.

Mr. MCCOLLUM. Mr. Schumer, it's never too late for you to buy into mine.

But let's assume that we agreed that we ought to be banning some of these weapons. What is it that would make me think or any reasonable man test, some third party that maybe is more objective, who hasn't been sitting in these hearings as many years as Mr. Schumer and I have—what is it that would make us conclude that a certain bad person out there on the street or a kid who's gone awry at 16 or 17, and maybe has a felony record a mile long, isn't going to wind up getting some gun to do the job he wants to do, and maybe even one that's been banned since it's obviously still on the street out there, even if he can't get the one of choice, and still do the job he's going to do, and probably with the same firepower, the same semiautomatic feature? What's to make me think, or let's say a reasonable man think, that we can keep that from happening with any ban that we put out there?

Sergeant CAHILL. Mr. McCollum, we may not be able to keep it from happening, but that is not what the problem is. The problem right now is that that person that is committing the crimes is going out there, getting weapons that they can spray an area with or that they can have a maximum amount of firepower, and that's what the problem we're trying to address.

Mr. MCCOLLUM. But isn't it true that there are lots of semiautomatic rifles, as well as handguns, that are out there that are just as deadly, have just as much firepower as the ones that have been banned in the bill last year?

Sergeant CAHILL. Sure.

Mr. MCCOLLUM. In fact, more?

Sergeant CAHILL. I readily admit that, yes, sir. But certain members of this committee and certain Members of the Congress wouldn't let us go any further.

Mr. MCCOLLUM. You'd like to ban them all if——

Sergeant CAHILL. Oh, no. No. No, sir, absolutely not, but I think there were a couple that were left out of the loop that we might have been able to bring in.

Mr. MCCOLLUM. But even if you banned a couple more of them, there would still be many more of those semiautomatic rifles and pistols out there with the same firepower as the ones banned that have not banned and would not be banned; am I not correct?

Sergeant CAHILL. Sure, sure. I agree with that.

Mr. MCCOLLUM. All right. Well, thank you, Mr. Cahill.

Mr. Schumer?

Mr. SCHUMER. Well, thank you, and I appreciate all the witnesses being here.

Obviously, I don't think we should do any of our legislating on the basis of just anecdotes, but there are anecdotes on each side. As I mentioned earlier, I think a far, far, far higher percentage of police officers and police organizations agree with my position than with the other position.

I want to ask Mr. Cahill, Sergeant Cahill, a question, a couple of questions, because we saw a big display of medals earlier. First, I want to ask you, were you in the armed services and—

Sergeant CAHILL. Yes, sir, I was.

Mr. SCHUMER. Did you serve in Vietnam?

Sergeant CAHILL. Yes, sir, I did.

Mr. SCHUMER. Did you fire assault weapons?

Sergeant CAHILL. Yes, sir, I did.

Mr. SCHUMER. Would you explain a little of that for us?

Sergeant CAHILL. Well, had I known this was going to be an armed services hearing [laughter], I could say tongue-in-cheek, I would have brought my medals from Vietnam, Cuba, and the Dominican Republic, and a few other places that I served, and I'd probably bring along a whole fistful of Marine Corps press releases to try to impress you all, but the fact of the matter is that that doesn't have any bearing on what we're here to discuss today.

Let me say I know the statement was made that somebody wasn't afraid of the guns; they were afraid of the people behind the guns. Well, I'll tell you, the fact of the matter is I was afraid of the guns, too. They killed a lot of people around me, and I spent a year in the hospital myself.

Those guns were designed to kill people, kill and maim people. That's what they're designed for. They were not designed for target practice. As a matter of fact, those assault weapons are not that accurate at any distance, but they are designed to kill and maim people, and that's it.

Mr. SCHUMER. And, Sergeant, I just want the audience to know that you represent far more police officers than anybody else who has spoken here today, either on this panel or on the other panel, and—

Sergeant CAHILL. Yes, sir.

Mr. SCHUMER. So, to me, at least, you speak with much greater authority.

I'd also say, having read the testimony and heard some of the panelists here, you guys don't strike me as extremists. A couple of people on the other panel did, quite frankly, when they talk about stormtroopers, and one guy spends most of his time talking about what a great hero he is—I say to myself heroes don't have to brag about being heroes; they are heroes.

Let me ask each of you a question. We heard from the police chief of Kennesaw, GA, that his town was a lot safer because they required everyone to have a gun in their home. Let me ask you, Sergeant Staples, do you think Washington, DC, would be a lot safer if every person was required to have a gun in their home?

Sergeant STAPLES. No, sir.

Mr. SCHUMER. What about you, Officer Hensley, do you think Baltimore would be a lot safer if every person—every person—were required to have a gun in their home?

Officer HENSLEY. No, sir.

Mr. SCHUMER. Sergeant Cahill, what about all the areas you represent?

Sergeant CAHILL. Absolutely not, no.

Mr. SCHUMER. And, Sergeant Risk, what about St. Louis?

Sergeant RISK. Absolutely not.

Mr. SCHUMER. You know, I was going to ask the good chief from Kennesaw if I had more time, has he visited New York City? Has he visited any of the larger cities of this country? Has he visited the suburbs that ring those larger cities? I think he's a fine man and he's doing his job. But there's sort of an intolerant view—just let me see the world through my little perspective, and I hope that I'm trying not to do that. I'm trying to understand that guns are a way of life in large parts of the country and not to say just, well, you know, it would be best to ban them, from my city's point of view, but that's not fair. That's not right. I don't think it would be, but I'd avoid that even from the other people's point of view.

But the folks who were there before, they didn't seem to have any understanding of what goes on in our cities, and I have to say to some of my colleagues—the gentleman from Maryland is not here and the gentleman from Georgia. You know, you say the criminals will get the guns. No guns are made illegally. It's not like drugs where they're made clandestinely in some basement or in some foreign country. They're all made legally, and all we're trying to do is chop off at the pressure point where they cross from legality to illegality. When the gun dealer in Georgia sells them to the crook who's going to deliver 50 of them in your cities, sold to anyone on the street, that's where we want to choke it off.

And I just have one final question for—let's ask Sergeant Cahill first and then the others can answer. It's been suggested by an earlier police witness, a fellow who I thought was sort of moderate in his testimony, and then when he got up and talked about it, he said that citizens should not be impeded by medal detectors here in Congress or barred from carrying firearms in these halls. Do you agree with that position, Sergeant?

Sergeant CAHILL. I'd have a great deal of problem with it personally, but, you know, just think about it. If you do repeal the law and allow people to carry guns here in the Capital, it kind of puts the Congress in the same dangerous position that a lot of other people—

Mr. SCHUMER. Or the FBI building—

Sergeant CAHILL. Sure.

Mr. SCHUMER [continuing]. Where you get a thorough check when you go in there—

Sergeant CAHILL. Sure.

Mr. SCHUMER [continuing]. Or your police departments that all of you work in?

Sergeant CAHILL. Sure.

Mr. SCHUMER. How about you, Sergeant Risk?

Sergeant RISK. Oh, any place that takes a gun away from an armed police officer is a safe place to be, as far as I'm concerned. I mean, it didn't bother me in the least that the Capital police took my gun. I mean, maybe some never saw a St. Louis police uniform. I could have bought this uniform anywhere. I'm going to walk through the door here with a gun? I felt—I felt that it was necessary. I wasn't a D.C. policeman. They did what they should have done.

Mr. SCHUMER. All right. Any others? Sergeant Staples. Officer Hensley.

Officer HENSLEY. It bothered me in a sense that he said that—and Ms. Jackson Lee touched on it as well—it bothered me that a citizen was able to walk into my police department and was able to sign in and carry a handgun wherever he wanted to within that—you don't know, especially the mentality of this person, whether he has any kind of vindictive mentality or anything else like that. It would bother me in a sense if somebody maybe walked into my police station and walked the halls with a gun, and I didn't know what the person was capable of doing.

Mr. SCHUMER. All right. Sergeant Staples.

Sergeant STAPLES. I agree with everybody on the panel. Aside from the tragedy that occurred in police headquarters on November 22, I can't imagine bringing in a homicide suspect and having him seated across the table and then at some point have to tell him I'm going to place him under arrest.

Mr. SCHUMER. Right. Thank you.

Mr. MCCOLLUM. Thank you, Mr. Schumer. Your time has expired.

And, Mr. Schiff, 5 minutes.

Mr. SCHIFF. Thank you, Mr. Chairman.

First of all, I'll say one more time, because I think I'm becoming a voice in the wilderness in this, I think the challenge to organizations is a subterfuge at times for looking very closely at legislation. I think that when the side advocating more and more gun control laws attacks the NRA, that is a substitute for looking closely at their legislation and requiring them to demonstrate how that legislation really would operate and really would be beneficial and really worth its cost in terms of police manhours.

I have to also say that the same is true on the exact opposite side. I think attacking Handgun Control is not productive, either. And I would hope that we would welcome the views of all of our panels and all of our witnesses and all of our citizens' organizations and to share those views back and forth, as we try to enact wise legislation.

It's been suggested in an earlier panel that making any argument like getting repeat offenders off the street is the first thing we should be doing is a subterfuge itself to avoid talking about gun control. So I'd like to talk about gun control.

Sergeant Risk, you mentioned the fact that, which is true in a number of localities, that more and more teenagers are committing violent crimes with firearms, including handguns; is that right?

Sergeant RISK. Yes, sir.

Mr. SCHIFF. That's what you're seeing in St. Louis?

Sergeant RISK. Yes, sir.

Mr. SCHIFF. Did you know that since the crime bill was enacted last year, last September, that it's now against Federal law in most circumstances for a teenager to possess a handgun? Were you aware of that?

Sergeant RISK. There's Federal law?

Mr. SCHIFF. There's Federal law.

Sergeant RISK. No, I was not aware of it.

Mr. SCHIFF. Well, I think you're unaware of it because the Justice Department hasn't bothered to enforce it, even though they asked for that provision in the crime bill.

And I've heard, finally, and I don't mean to be vain, but I strongly suspect at least it's because I hammer them every chance I get on that fact, that they're now cranking up the idea of doing something. But I want to point out that I supported that act, and that act became part of the crime bill. I didn't agree with a lot of other things in the crime bill, but I supported that act. And it's been against the—against Federal law for the last 6 months-plus for juveniles to possess handguns. To the best of my knowledge, there has not been one single Federal prosecution under that statute, and it's not that I expect the U.S. attorneys to prosecute every juvenile they could possibly find, but I think the obvious inaction shows that the call for that act was political rather than legislative—or for law enforcement—inspired.

Let me ask about the Brady Act. Does the St. Louis Police Department do the checks itself under the Brady Act in your locality?

Sergeant RISK. We do the record checks, yes, sir.

Mr. SCHIFF. You do the record checks?

Sergeant RISK. Yes, sir.

Mr. SCHIFF. How do you fund that? Now is it paid for out of the police budget or can you tell me where you get the money for the section of your department that—

Sergeant RISK. Well, anyone can come in for any reason to get a record check. It just doesn't have to be for a handgun permit. They pay for it. The citizen comes in and pays for the record check.

Mr. SCHIFF. All right. What is—does that include a Brady Act check? I mean, if you do a check—if a gun retailer, through the Brady Act, submits a request for a check, do you charge that retailer?

Sergeant RISK. They charge the individual that comes in, the purchaser, the one that comes in to buy the gun is the one they charge for the check.

Mr. SCHIFF. In your locality the purchaser must come to you first then? They don't fill out the form and give it to the retailer?

Sergeant RISK. They go to the retailer. They get the serial number of the gun, all the information, make, model, caliber, things like that. Then they come down to the police department. They get a record check for the gun, and they have to go—we don't issue the gun permits. The St. Louis Sheriff's Department issues the gun permits. Ours is a little different from other departments—

Mr. SCHIFF. OK.

Sergeant RISK [continuing]. How they issue gun permits.

Mr. SCHIFF. Well, let me ask you this question: regardless of who does the check, then, could you tell me, when an individual is turned down because they have in some way falsified their application, although I'm not sure it's working that way in St. Louis, do you know if your U.S. attorney's office prosecutes anybody for that violation of Federal law?

Sergeant RISK. I don't know. I don't know if we've had anybody come in to falsify any records. So I really can't answer the question. I don't know if they do or they don't.

Mr. SCHIFF. My time is up. Could I just conclude, Mr. Chairman, that, once again, I try my best as an individual member of this body to look at each bill as close as I can and as intelligently as I can. I have supported some of the bills that have been proposed

that are called gun control; I have opposed others, and I appreciate all the viewpoints being contributed, including this panel, and I thank you very much for being here.

Mr. MCCOLLUM. Thank you, Mr. Schiff.

Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Sergeant, you said you issue a gun permit. What does that mean?

Sergeant RISK. When a private citizen wants to purchase a firearm, he has to obtain a permit from the sheriff's office, which is a separate entity from the police department. They come to the police department first for the record check. We give them—we do a record check on them. We give them a hard copy of their record stating they have no prior criminal record. They then have to go over to the sheriff's office, who will issue them a permit to purchase. They take that permit back to the gun dealer, and when they present that permit to them, the gun dealer issues the—

Mr. SCOTT. What is the Brady—what does a background check cost?

Sergeant RISK. I believe they're like \$10.

Mr. SCOTT. As a local police officer, are you authorized to enforce Federal law, as well as State law?

Sergeant RISK. We can arrest an individual for a felony and take that case over to the U.S. attorney and ask them to adopt the case, but if you're asking me do we make arrests on Federal property or anything, no, we don't.

Mr. SCOTT. Well, no, as—if there is a violation of Federal law, you can make an arrest?

Sergeant RISK. We can make an arrest. The possibility—the chance of that happening are kind of slim and remote. The FBI usually handles that or ATF or DEA.

Mr. SCOTT. OK. Now, Sergeant Staples, what happened to the person that was involved in the shootout in the police station?

Sergeant STAPLES. Do you mean the assailant who came into the—I'm sorry.

Mr. SCOTT. Go ahead.

Sergeant STAPLES. Are you referring to the assailant who came into the building? He killed himself.

Mr. SCOTT. So what effect would increasing the punishment have had on that situation?

Sergeant STAPLES. On that situation, none at all.

Mr. SCOTT. None? And could you go into a little bit more detail as to why the fact that it was an assault weapon rather than a pistol made so much difference?

Sergeant STAPLES. When he walked into that room, he walked into a room where Sergeant Daly was, along with three FBI special agents.

Mr. SCOTT. Were all of them armed?

Sergeant STAPLES. All were armed.

Mr. SCOTT. OK.

Sergeant STAPLES. I can't go into the background as far as FBI training, but I know that they are at least trained as well as we are, which means as extensive, their firearms training.

Because he was armed with an assault pistol that fired a large number of rounds at a very high rate of speed, it is my belief, and the belief of the people who were responsible along with me with this investigation, that is how he managed to do the damage that he did. Had he been armed with a standard 9-millimeter semi-automatic handgun or a .38 revolver, 357 revolver, .45, .44—it's just not believable that he could have killed or did the destruction that he did in that room on that day.

Mr. SCOTT. Thank you.

Sergeant Cahill, why—the statistic has been used that only 1 percent of the murders are committed with military assault weapons. Is that accurate?

Sergeant CAHILL. Excuse me, sir. One percent of the weapons traced were assault weapons by ATF, one in eight weapons, one in eight guns were traced. Eight percent of all the guns traced were assault weapons.

Mr. SCOTT. Well, why couldn't a person, if we banned and took assault weapons off the map, why couldn't the ones that are using those weapons use shotguns or other weapons—

Sergeant CAHILL. Certainly—I'm certain they could use anything that they could get their hands on, but that doesn't say that we should be giving them more things to use.

Mr. SCOTT. And how effective would a shotgun or a weapon of that nature be for criminal activity?

Sergeant CAHILL. A lot less effective than the weapons that they're using today, a lot less effective.

Mr. SCOTT. Why is that?

Sergeant CAHILL. Well, sir, you have a lot stronger chance of survival, had I fired a shotgun from this distance to you, rather than if I stood here and sprayed you with a MAC-10, because I'd probably hit you a couple of times and several other members there.

The assault weapons that we're seeing out there have more fire power. A lot of them are using stronger ammunition with a higher velocity, a stronger tinsel strength in the projectile, and they have more killing power.

Mr. MCCOLLUM. Mr. Scott, your time is up.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. MCCOLLUM. You're welcome.

Mr. Bryant.

Mr. BRYANT of Tennessee. Thank you, Mr. Chairman.

Sergeant Staples, I listened to your statement and I heard part of the second statement. I had to excuse myself for another commitment, and I missed the last two statements, but I have read your testimony. And I'd like to again start with Sergeant Staples.

As I understand, you have—I think you said you've investigated over 400 homicides. Roughly 90 percent were caused by handguns—

Sergeant STAPLES. Yes.

Mr. BRYANT of Tennessee. In your career? And through your statements, I think understand that if you had your druthers, you would like to see all handguns banned across the country nationwide?

Sergeant STAPLES. No, sir.

Mr. BRYANT of Tennessee. Well, that's what I understood you to say earlier. I mean, you're not happy with just the ban in Washington, DC, but you'd like to see it made more nationwide, as I understand, to keep people from illegally bringing handguns in from other States into Washington, DC.

Sergeant STAPLES. I don't recall making the statement that I wanted handguns banned nationwide. If I did say that, it was misstated.

Mr. BRYANT of Tennessee. Well, I was just interpreting. In other words, you're satisfied with the way the handgun ban in Washington, DC, works right now?

Sergeant STAPLES. Yes, sir.

Mr. BRYANT of Tennessee. And, up until recently, Washington, DC, as far as I know, was the murder capital of the United States, and you're happening with the fact that people can't have a hand—lawful citizens can't have a handgun to defend themselves, but, yet, the people who make Washington the murder capital of the world can get handguns and, in fact, do and use them? You're happy with that situation?

Sergeant STAPLES. I'm sorry, am I happy with—

Mr. BRYANT of Tennessee. The fact that Washington, DC, is the murder capital of the country and you have a gun ban here?

Sergeant STAPLES. I'm not happy with Washington, DC, being the murder capital of the world or the United States or anything close to that.

Mr. BRYANT of Tennessee. Why doesn't the gun ban work, if it's all it's touted to be?

Sergeant STAPLES. Well, I can say to you that, personally and professionally, I would not like to see every citizen of the District of Columbia armed with a handgun and have the ability to walk the streets of the District of Columbia with that handgun. I have no disagreement with a person owning a handgun and keeping that handgun in their residence. If I gave you the impression that I wanted to get rid of handguns across the country, I apologize to you. That's not what I—

Mr. BRYANT of Tennessee. No, I apologize if I misunderstood, but my key question is, obviously, if you look at Washington, DC, as an example of gun control, gun control does not work?

Sergeant STAPLES. It's not working in the District of Columbia because it doesn't apply any place else.

Mr. BRYANT of Tennessee. Now how do we make it apply everywhere else or anywhere else?

Sergeant STAPLES. With the bill that was passed last year.

Mr. BRYANT of Tennessee. I'm talking about handguns now, not just semiautomatic firearms. You've got a handgun ban here in Washington, not just semiautomatic.

Sergeant STAPLES. That's correct. Now you're asking me how does that work across the country?

Mr. BRYANT of Tennessee. Well, no, I don't think my—maybe my questions are complicated. I'm saying, obviously, gun control that you have in Washington, DC, does not work—

Mr. SCHUMER. Would the gentleman yield for a minute?

Mr. BRYANT of Tennessee. Well—

Mr. SCHUMER. I'd ask unanimous consent he be given an additional minute.

Mr. MCCOLLUM. Well, the gentleman has the time, and, of course, he could yield—

Mr. BRYANT of Tennessee. Well, if I could have additional time, I'd be happy to yield.

Mr. SCHUMER. I ask unanimous consent—

Mr. MCCOLLUM. Without objection.

Mr. SCHUMER [continuing]. He be given 1 additional minute.

Mr. MCCOLLUM. Without objection.

Mr. SCHUMER. Will the gentleman yield?

Mr. BRYANT of Tennessee. Absolutely.

Mr. SCHUMER. I mean, the point—you were out of the room—and I don't blame you for that; I've been out of the room, too—when we went through this before. Guns come in—over 90 percent—95 percent of the guns used in crimes in Washington, DC, come from jurisdictions outside Washington, DC, that have no gun control or weak gun control laws. Speaking for myself—I can't speak for the sergeant—but what most of us on the gun control side are advocating is some kind of national system that builds on the Brady bill for registration and licensing, so that somebody who comes from—I don't know if Tennessee has any law; they have a waiting period in Tennessee, so let's take Georgia—and buys 50 or 100 handguns, puts them in the back of their truck or car and drives up to D.C. and sells them on the street corner, can't do that unless they show a legitimate license to do it. That's all. It's not a ban, but you do need a national law. And to say Washington, DC, has gun control laws, and, yet, they have lots of murders, belies the fact that almost all the guns come from States that don't have gun control laws. That's all. And we don't have barbed wire around each of our State jurisdictions or checkpoints so that each State can check. Washington, DC, can do nothing about the fact that someone can go to Georgia, buy 50 guns, and drive back to Washington, DC—

Mr. MCCOLLUM. Well, the gentleman has done more than 1 minute, but I will—

Mr. SCHUMER. I appreciate it.

Mr. MCCOLLUM [continuing]. Yield 2 or 3 more minutes to the gentleman from Tennessee.

Mr. BRYANT of Tennessee. OK, thank you.

My point is this: that already that's against the law to go out and bring guns across State lines and sell them in that fashion, and we need to enforce the existing Federal laws, but I still have a problem. Sergeant, we're not just talking about the assault weapon ban. We're talking about in Washington, DC, you cannot possess any type of handgun. Now for you to effectively stop guns coming over, handguns from Virginia, you'd have to advocate that Virginia adopt a similar handgun ban as Washington, not just an assault weapon ban, because you're still going to have the revolvers coming in here; is that right? I mean, it's going to have to be a unified law across the country to ban handguns if it's going to work in Washington?

Sergeant STAPLES. That's correct, if that were my position, yes.

Mr. BRYANT of Tennessee. But you're not advocating that?

Sergeant STAPLES. No.

Mr. BRYANT of Tennessee. OK. In fact, you personally feel that someone ought to have that right, if they want to do, to keep a handgun in their home to protect themselves in self-defense?

Sergeant STAPLES. That's correct, sir.

Mr. BRYANT of Tennessee. But that's not the law here, and I understand. I'm not trying to put you in a spot there. I understand you work with the laws that are made, but that is part of the issue that we talk about on this side of the aisle. And, again, we have to go further and decide how much firepower do we want to give the private citizen to protect himself, and I know one of you made reference to statements that were given by witnesses last week, and we heard a number of examples of people who did use that extra fire power while out camping, in the defense of a law enforcement officer, and probably saved the day in both instances, and a simple revolver or five or six shots in a cartridge—in a case—would not have done the job.

So that's where we're at on this issue, and I appreciate all of you, the backgrounds that you bring to this, the courage that all of you have shown. I very much appreciate that. As a former U.S. attorney, I've worked with people like you. I admire you. We may just disagree on some of the issues, and that's what America's about.

Mr. MCCOLLUM. Thank you, Mr. Bryant.

Ms. Jackson Lee.

Ms. JACKSON LEE. Mr. Chairman, thank you. And I wanted to, in the course of this hearing, again, thank you for providing the opportunity, albeit disparate thought and disparate philosophies that have been expressed here, I think it is very good that we have this opportunity.

And I wanted to call each of the names, Sergeant Staples and Officer Hensley, Sergeant Risk, and, certainly, Sergeant Cahill, to personally thank you for your appearance here and taking the time to, one, stay with us most of the day on what I think is a very important issue.

Let me say to you that in absentia I do apologize to the preceding panel. I was not able to hear much of the academic thought that was being discussed because I had duties on the House floor.

But let me ask a question. I understand there was quite a bit of debate on the second amendment and whether or not, both constitutionally and otherwise, the second amendment allowed the free-flowing of weapons with respect to every citizen in the United States of America. If I might simply ask you a question, I'm reminded of my childhood, and I'm going to ask each of you. My understanding is that bullets kill and words do not. Sergeant Staples, is there some other evidence that words can kill you versus bullets in guns used by someone?

Sergeant STAPLES. Not that I know of.

Ms. JACKSON LEE. You believe that bullets kill and words do not?

Sergeant STAPLES. Absolutely.

Ms. JACKSON LEE. Officer Hensley.

Officer HENSLEY. I wholeheartedly believe that bullets kill and words do not.

Ms. JACKSON LEE. All right, Sergeant Cahill? And I ask this in all seriousness.

Sergeant CAHILL. Well, Ms. Jackson Lee, I want to tell you, I have certainly been dressed, redressed, addressed, and chewed out many times that I thought I was going to die, but you've got it right there with the bullets.

Ms. JACKSON LEE. And I've been in the same position.

Sergeant Risk.

Sergeant RISK. I agree with the other three.

Ms. JACKSON LEE. And I ask it in all seriousness.

Let me ask Sergeant Cahill, because at one point we were in the battle of the petition-signers, and I notice as you opened your remarks you indicated representation of some 270,000 men and women across this Nation. Might I expect that if you put out a petition, you might very well get a number of people to sign it, emphasizing the danger of assault weapons?

Sergeant CAHILL. Let me explain the procedure that the Fraternal Order of Police has used in the past. We prepare a resolution that goes to the national conference. The resolution is put in a book and sent out to every lodge in the country, which are over 2,000, at least 30 days prior to every national convention. The local lodges elect delegates to the national convention, 1 delegate for every 50 members. These resolutions are then reviewed at the local level, and the delegates are directed which way to vote, when they go to the national convention.

As I stated earlier in my testimony, attached to my testimony are the copies of the two resolutions that were put on the ballot in the voting machine. So when they voted for who they wanted for president and every other officer, they also voted on these two issues. And they were both passed unanimously—not unanimously, I'm sorry, by a majority of the delegates that voted. And we're talking, I think, around 2,700 delegates voted.

Ms. JACKSON LEE. Free and clear elections with no duress?

Sergeant CAHILL. They went behind the curtain and voted their conscience.

Ms. JACKSON LEE. Let me also raise a question with you because I think it's important that we certainly not denigrate any law enforcement officer. They have a right to their personal point of view.

Just in the course of reviewing your testimony, meaning plurally, and listening to all of you, I have not heard any of you—and correct me if I'm wrong, if someone wants to grab the mike—say anything about homeowners protecting their property or at least having weapons that might be used if, for example, a law-abiding citizen is in their home and being under siege by some kind of criminal vacant, break-in of any sort. Has anyone here made that comment, that you are against a law-abiding citizen having a weapon that—and let me put it in the category of a handgun or some legally governed particular weapon in their home?

Sergeant CAHILL. No, ma'am.

Ms. JACKSON LEE. Officer Hensley, you were getting ready to—

Officer HENSLEY. Yes, ma'am, and if I could just try to touch on that point briefly, we're not here to argue that the second amendment—and, by the way, I'm not a lawyer and in no way can I go into detail about the second amendment. The same reason we're here—we're on the front line as officers, and I've encountered Tech-9's and I've encountered Uzis, but what I have to say is take the

availability of these weapons out of the criminal element's hands. It's really a danger to us as law enforcement officers. It's really a danger to—and I've seen them on numerous occasions—innocent bystanders who were standing on the street with drug gangs in drive-by shootings, and while the shootings are on the street there are innocent children being hit, innocent citizens being hit. So we're not by any means saying take them out of the hands of law-abiding citizens; we're not. I'm saying take these type of weapons out of the hands of those persons who want to go out and do damage and to kill all the people. That's what we're trying to say.

Mr. MCCOLLUM. Ms. Jackson Lee, your time is up.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. Will we have a second round?

Mr. MCCOLLUM. I don't know if we will. We have not on any panel yet today, but you certainly may submit questions to the record.

Ms. JACKSON LEE. I appreciate it. Thank you, gentlemen, very much. And if we have a second round, I'll ask some additional questions. But thank you again.

Mr. MCCOLLUM. Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman.

Mr. Cahill, I was reading through your testimony here, and you say on—you don't have your pages marked, but it says here, if I can paraphrase you, you're bemused—I'm not quite sure what that means—but you're bemused when you hear a cop say that they head of the FOP or the FOP isn't representing his views. I mean, certainly, there are members, legitimate, fine, upstanding law enforcement officials who belong to FOP that may disagree on this or any number of other issues. Wouldn't that be accurate?

Sergeant CAHILL. Mr. Barr, I have never disputed that, and the organization has never disputed that. There's no way we could ever get 100 percent of our members to agree on anything, the same way that Congress could never do that.

Mr. BARR. Why does it bemuse you to have a fellow member of FOP say that they disagree on that issue?

Sergeant CAHILL. Because they will come out in public on an issue like this when, in fact, they've refused to come out on an issue that affects them adversely on, say, a labor side.

Mr. BARR. So you think that it's legitimate for them to say they disagree with FOP on certain issues, but not on others?

Sergeant CAHILL. No, sir. I say that it bemuses me that they will come public on some issues at the prodding—at certain prodding, but yet not work on other issues that are there to help them.

Mr. BARR. Well, OK. I'm surprised sometimes by panelists and members that denigrate people that happen to disagree with them and—

Sergeant CAHILL. I would never do that.

Mr. BARR. Yes, right. Also, Mr. Cahill, in your testimony, and I quote here toward the end—and I'm sorry I can't cite you the page; they aren't numbered—but it says, "There's one fact the NRA can't make go away, one dirty little secret, assault weapons are eight times more likely to be used in crime than legitimate sporting weapons." I don't know what's dirty or little or secret about it. I mean, there's very public debate on all of these issues.

What is a legitimate sporting weapon?

Sergeant CAHILL. I believe traditional sporting weapons include standard shotguns, 308's, standard weapons that you would normally see in shooting.

Mr. BARR. OK. Would any handguns be included in your definition of a legitimate sporting weapon?

Sergeant CAHILL. Yes, sir. Yes, sir, I've seen plenty of handguns used in hunting. I've used them myself in hunting.

Mr. BARR. Well, there are sports shooters that shoot at inanimate objects that are very legitimate target practice meets, bowling pin shoots, and so forth. Are you aware of those?

Sergeant CAHILL. Sure, sure.

Mr. BARR. OK.

Sergeant CAHILL. But we're not going to satisfy everybody.

Mr. BARR. Given the fact, then, that even by your definition, a legitimate sporting weapon is a very, very broad category of firearms, basically, virtually any standard handgun that somebody uses to shoot at targets or any number of rifles, where do you obtain this statistic, this secret, as you call it, that assault weapons are eight times more likely to be used in crime than all of these other weapons?

Sergeant CAHILL. That statistic comes from the Bureau of ATF gun traces, sir.

Mr. BARR. Well, I would respectfully suggest to you that you check with them because I think either you're overstating it here or they're giving you bad information, because if you include in the category of legitimate sporting weapon all of the weapons that you've indicated, agreed with me are included, then I really don't see that assault are used eight times more in crimes than all of these other weapons combined. I really would suggest you may question ATF on that.

Sergeant CAHILL. Well, sir, when I'm looking for a statistic and I go to the experts, I expect I'm getting the proper information.

Mr. BARR. I mean, if you agree with that, then that's fine. I just question the statistic there.

Sergeant—or, Officer Hensley, if you could, you mentioned toward the end of the response to the last question that it's your desire, your aim in being here today, to do whatever you can to keep weapons out of the hands of people that are committing crimes, was that—was that what you said before? I don't want—I just want to understand your position. I don't want to put words in your mouth.

Officer HENSLEY. I think we were getting confused and we were debating the second amendment as well, and—

Mr. BARR. You said you weren't here to debate the second amendment, but it was your concern—and then I was wondering what—I thought you said that it was your concern, as I would presume it would be, to do everything you can to try and keep these, or I presume any other, weapons out of the hands of people that commit crimes?

Officer HENSLEY. These assault weapons, yes, sir.

Mr. BARR. Right. To keep them out of the hands of criminals or people that would use them for the commission of a crime?

Officer HENSLEY. That's correct.

Mr. BARR. OK. Thank you. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Thank you, Mr. Barr.

Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman. I appreciate being able to come and stay with this subcommittee as long as I have. But I'm here because this is so an important subject that we just have to keep the good fight up.

And I want to congratulate all of you for being here. You're all very articulate.

And please understand, Sergeant Cahill, that any member reserves the right to challenge a statistic, and sometimes suggest you go back and check the statistic. What they're using as a basis to challenge it nobody knows. It may not sound right or they don't like it, or anything. And so you cite a statistic that's been used time and time again, and somebody says, "Well, where'd you get it?"

"Well, I got it from ATF."

"Well, it doesn't sound that great to me."

So that's life in the city. I mean this is what this thing is all about. People keep—you know, we make this such a difficult job, and I can remember when the police community wasn't too keen on gun control methods, but when those statistics start coming in and your job keeps getting more and more dangerous, and the communities are getting more dangerous, it's tougher to live in our society these days, and it's not just the big cities. I mean, you know, everybody keeps acting like you've got to be in one of the major cities to be in jeopardy of weapons. Do any of you doubt that this problem has now gone beyond the suburbs, but it can happen anywhere? As a matter of fact, some of the people piling up guns and illegally dealing in them may not be in the cities at all. They're bringing them to the cities. And so we have a very, very serious problem.

I worry about the fact that we have over a couple hundred million guns out there, best guess, 220 million, but that was way back. I don't know where it is now, and about 2 million more coming in to our society every year, and many of them are more high-powered than they used to be in an earlier time. And so we're a Nation that's coming here to try to resolve this problem on a national level, and people keep giving some of our witnesses such a hard time about something that is so obvious to all of you who every day that you get up and put on your uniform or your suit, you're going out there and you don't know what kind of weapons are out there. Anybody you talk to or stop, who knows?

And so I want to express my concern that we look at this from your point of view and listen to your suggestions. I think it's very important.

I also am struck by the fact that we keep talking about criminals. Great, but what about the Arian Nation, the Ku Klux Klan, the Skinheads, the White Supremacists, who are all involved in some degree in illegal weapons activities that we need to be very, very much worried about? And then we have—the NRA has taken quite a beating this morning, but what about the law enforcement? Let me read some of these other organizations: Citizens Committee for the Right to Keep and Bear Arms, Gun Owners of America, the

Second Amendment Foundation, Law Enforcement Alliance of America.

Could any of you comment about any of these kinds of observations as we close this down? I am the last person asking questions today. So you'll be out of this after that.

Sergeant CAHILL. All right. Actually, Congressman, I believe they all come from the same umbrella, and I know of two of the organizations that were financed by the mother organization. So when you're talking about one, you're talking about them all.

Mr. MCCOLLUM. Thank you very much, Mr. Conyers.

I think Ms. Jackson Lee wanted to ask one more question. She's not here right now, but I've got one technical one I wanted to follow up with because I didn't understand it from Sergeant Staples a minute ago.

I believe I heard you say, in answering someone's question, that if in the case you cited to us earlier there had been a standard 9-millimeter semiautomatic pistol instead of this semiautomatic assault weapon you characterized, or if there had been some other type of gun, that maybe this would not have happened.

What made this—you did not state in your testimony, I don't believe, what type of weapon this actually was. I mean, you described it, but I don't know whether—which brand or which variety it was, but I'm curious (a) if you know and you can state for the record what it was, and (b) whether you do or not, what, in your mind, made it—what was its characteristic that made it the dangerous weapon you described as opposed to the 9-millimeter semiautomatic?

Sergeant STAPLES. The weapon itself was a MAC-11 or a MAC-10 variety.

Mr. MCCOLLUM. It was a pistol?

Sergeant STAPLES. Yes, sir.

Mr. MCCOLLUM. All right.

Sergeant STAPLES. It was capable of firing more than 30 rounds without reloading, and you didn't have to release the trigger in order for it to continue firing.

Mr. MCCOLLUM. In other words, it was an automatic weapon, not a semiautomatic?

Sergeant STAPLES. That's correct, sir.

Mr. MCCOLLUM. A fully automatic?

Sergeant STAPLES. Yes, sir.

Mr. MCCOLLUM. All right, well, that's—I think that is a very big distinction because the fully automatics, as you know, would be a machinegun, essentially, and we banned those a long time ago, and not a member here doesn't believe it should be banned.

Mr. SCHUMER. Would the gentleman yield?

Mr. MCCOLLUM. I'll be glad to yield.

Mr. SCHUMER. Yes, I'll make two points. Last year when I asked a representative from the NRA if those should be banned, they said no, but my point is, was it a converted weapon——

Sergeant STAPLES. Yes, sir.

Mr. SCHUMER [continuing]. Because now they sell kits that convert the semiautomatics to automatics.

Sergeant STAPLES. That's correct.

Mr. SCHUMER. Is this a converted weapon?

Sergeant STAPLES. Yes, sir.

Mr. SCHUMER. Thank you.

Mr. MCCOLLUM. And if I might reclaim, I have not seen the product of the Task Force on Guns that's coming out with a proposed legislative product shortly, but it's my impression, Mr. Schumer, we may see something in there dealing with these converted guns.

Ms. Jackson Lee, you had a question you wanted to follow up with?

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I did have a question I wanted to follow up on.

And that is, in the course of all your business, since even though these hearings have been postured as self-defense hearings, I believe, the only legislation that I hear rumored is the repeal of the assault weapons ban, and we're getting into a discussion between law-abiding citizens and others. Let me simply ask each one of you that in the course of your dealings, have you not—and this is not labeling law-abiding citizens, but have you not come across—and I know it may be different in a DEA officer—individuals who have previously been law-abiding, and, unfortunately, have snapped and taken advantage of the access to maybe a high-powered weapon to bring tragedy upon the community? That's the first question.

The second question is, to insure that we both are on the same page, that none of us are talking about removing weapons from individuals who may be protecting their home and they have that particular weapon in their home. We hope that they hold it safely in their home, but no one is talking about that kind of self-defense as being prohibitive, or you would not want to see that occur.

And if you would answer that, and then to finally say, if you have a situation where any and all persons could walk the highways and byways and streets with concealed weapons, would it not make your life as a law enforcement officer that much more dangerous? Sergeant Staples.

Sergeant STAPLES. To address the last point first, I can't imagine having to deal with everyday work and walk the streets of the District of Columbia knowing that every person I encounter would be armed with a concealed weapon. I just can't envision that. I can't envision it happening in the District of Columbia or any other city in this country.

Your reference to if I think handguns should be removed—

Ms. JACKSON LEE. No, the question is, that you're not arguing that you should go into people's homes and take their weapons out that they might be protecting themselves with? And then the last one was, there are times when citizens who have had no prior record have used, unfortunately, a weapon and caused great damage?

Sergeant STAPLES. Right.

Ms. JACKSON LEE. And it's a weapon like an assault weapon?

Sergeant STAPLES. Right. I do not advocate taking weapons away from law-abiding citizens, and there have been many, many occasions, especially in reference to juvenile offenders, where there is no history of violence violations or criminal violations, and we end up in a position investigating a murder, for whatever reason, but these people are involved in them.

Ms. JACKSON LEE. Officer Hensley.

Officer HENSLEY. Well, we touched on this. I, dealing with drug enforcement, I primarily deal with those persons involved in drug trafficking crimes. Second, I'm hoping to understand your question. Was your question that a law-abiding citizen who already has an assault weapon of this type in their home?

Ms. JACKSON LEE. No. What I'm saying is that, just in the normal course of business and the normal weapons that you would think a homeowner would have, they might have a handgun; they might have a rifle. You're not advocating going into those homes and taking out those particular weapons?

Officer HENSLEY. Oh, no, ma'am.

Ms. JACKSON LEE. None of us are. I just wanted to be clear on that.

Officer HENSLEY. Yes, ma'am, that is correct.

Ms. JACKSON LEE. And you, just from your life experience as a law enforcement officer, I'm sure there are occasions—and you do deal with drug traffickers and those that are clearly in the criminal element, but my question was, you can have individuals with no preceding criminal record or preceding weapons violation record that can take a weapon, maybe like an assault weapon, and cause great damage for the first time?

Officer HENSLEY. Yes, ma'am. I receive brochures and law enforcement magazines, and innocent references to persons who have been fired from their job and just walked into an office building and opened fired on fellow workers using a Tech-9. It's a similar situation; that person has snapped and gone into a place of business and done it. So, yes, it can happen.

Ms. JACKSON LEE. Thank you.

Sergeant Cahill—I was trying to get all of them, please, Mr. Chairman.

Mr. MCCOLLUM. All right, fair enough.

Sergeant CAHILL. One area that I covered during my testimony, of course, was 2 years ago when one of my own officers was killed by an assault weapon, and that was by a citizen who legitimately owned it and just happened to have a mental problem, and, unfortunately, snapped and that precipitated it.

No, we don't think that we should take guns away from everybody, though, no. Does it make it more dangerous for me? It makes it even more dangerous for you because now I have to assume, and I have to change my mind set with everybody I'm dealing with on the street, that there's a probability, more than a possibility, that that person's got a concealed weapon, and that concerns me a little bit because I have to change my mind set in how I'm going to deal with it. I not only have to prepare for my safety, but yours, but it appears to you to be overreaction, and on my part I'm saying I'm justified. So that's going to create problems in the future.

Ms. JACKSON LEE. Thank you.

Sergeant Risk.

Sergeant RISK. The only thing I wanted to say was about the day St. Louis allows people, everybody, to carry a gun is going to be a real scary day. The guys that work for me now are out here stopping cars and pedestrians, trying to get some of these guns off the street, and now when they stop a car and there's three or four people in the car, it's no longer a question of, does the guy have a gun.

Now we're going to play this game where, well, is this one legal; is his legal? And, in the meantime, the third guy maybe is a criminal and pulls a gun out and ends up shooting one of my men. I mean, it's scary. That's a scary thought, and I'll be sorry if it happens.

Ms. JACKSON LEE. Thank you. And thank you very much, Mr. Chairman, for your courtesies.

Mr. MCCOLLUM. Well, thank you, Ms. Jackson Lee.

We're about ready to wrap this hearing up. I'd just make one comment, in light of Ms. Jackson Lee's series of questions. We have a concealed weapon law now in my State of Florida, and there are those who will cite statistics to show crime is down in some communities based on that. Whether there's any accuracy to that, I don't know, but I know that our local law enforcement folks in my area of central Florida now have expressed to me no problem with the concealed weapon law, but that's just another example of how differing views exist, and we saw them out here today, among those in the law enforcement community, legitimate views, legitimate differences. Overall today, this hearing, not just this panel, but all three panels I think have given us a fairly broad, comprehensive look at a variety of positions relative to the situation we exist in today, as we move towards marking up a piece of legislation dealing with firearms early in May.

My own judgment and views on it have not shifted appreciably, but I've gotten a lot of good insight, and I know our committee members have. I still walk away from this today with the greatest respect for all of those of you on this panel, with a sense about it that, no matter what we do in the terms of restricting firearms in this Nation, we're still going to have the bad guys getting guns and killing people, and that while what we're going to do in the next couple of weeks is going to be a very significant piece of legislation, the important part of it is going to be the part that deals with putting new penalties, minimum mandates in, for using firearms in the commission of crimes, and, hopefully, get the Federal law enforcement community and the Justice Department to enforce those, to take the bad guys who do commit crimes with guns off the streets and send a deterrent message again.

And I doubt, whether you agree with me on the gun question or not, I doubt any of you have a problem with our putting more deterrents back into the criminal laws of this Nation for people who do use guns, and I think that's going to be, as I say, the centerpiece of this legislation.

And I thank you for coming here today. I thank you for participating in it today, and it's been a long day for all of us, but thank you again.

The hearing is now adjourned.

[Whereupon, at 4:18 p.m., the subcommittee adjourned.]

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